

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING N/A	PAGE 1	OF 1	PAGES 313
2. CONTRACT NO. DE-AC06-04RL14600		3. SOLICITATION NO. DE-RP06-04RL14600		4. TYPE OF SOLICITATION [] SEALED BID (IFB) [X] NEGOTIATED (RFP)		5. DATE ISSUED 12/11/2003	
6. REQUISITION/PURCHASE NUMBER 06-04RL14600.000		7. BY U.S. Department of Energy Richland Operations Office: Attn: Andrew H. Wirkkala Procurement Division, MS A7-80 825 Jadwin Avenue Richland, WA 99352					
8. ADDRESS OFFER TO (If other than Item 7)							

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder"

SOLICITATION

9. Sealed offers in original and ___ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in **Refer Section L**

CAUTION - Late Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.


10. FOR INFORMATION CALL:	>	A. NAME Andrew H. Wirkkala		B. TELEPHONE (NO COLLECT CALLS)		C. E-MAIL ADDRESS
		AREA CODE 509	NUMBER 373-7835	EXT. 	Andrew.H.Wirkkala@rl.gov	

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OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 250 ** calendar days <i>(60 calendar days unless a different period is inserted by the offeror)</i> from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule																	
13. DISCOUNT FOR PROMPT PAYMENT <i>(See Section I, Clause No. 52.232-8)</i>	<table border="1"> <tr> <th>10 CALENDAR DAYS</th> <th>20 CALENDAR DAYS</th> <th>30 CALENDAR DAYS</th> <th>CALENDAR DAYS</th> </tr> <tr> <td>%</td> <td>%</td> <td>%</td> <td>%</td> </tr> </table>	10 CALENDAR DAYS	20 CALENDAR DAYS	30 CALENDAR DAYS	CALENDAR DAYS	%	%	%	%								
10 CALENDAR DAYS	20 CALENDAR DAYS	30 CALENDAR DAYS	CALENDAR DAYS														
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14. ACKNOWLEDGEMENT OF AMENDMENTS <i>(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:</i>	<table border="1"> <tr> <th>AMENDMENT NO.</th> <th>DATE</th> <th>AMENDMENT NO.</th> <th>DATE</th> </tr> <tr> <td>0001</td> <td>01/14/04</td> <td>0004</td> <td>05/28/04</td> </tr> <tr> <td>0002</td> <td>01/27/04</td> <td>0005</td> <td>06/10/04</td> </tr> <tr> <td>0003</td> <td>01/31/04</td> <td></td> <td></td> </tr> </table>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE	0001	01/14/04	0004	05/28/04	0002	01/27/04	0005	06/10/04	0003	01/31/04		
AMENDMENT NO.	DATE	AMENDMENT NO.	DATE														
0001	01/14/04	0004	05/28/04														
0002	01/27/04	0005	06/10/04														
0003	01/31/04																
15A. NAME AND ADDRESS OF OFFEROR DUNS NO:	CODE 142762819 FACILITY SEC Closure Alliance, LLC 309 Bradley Boulevard Richland, WA 99352-4381																
15B. TELEPHONE NO.	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER <i>(Type or print)</i> Christopher P. Leichtweis President																
AREA CODE 509 NUMBER 946-8100 EXT N/A	17. SIGNATURE 																
[X] 15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE	18. OFFER DATE 9-27-04																

AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED N/A	20. AMOUNT See Section B.	21. ACCOUNTING AND APPROPRIATION 89X0315 EZ1342271 \$900,000 254 RL0042 RL	
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION *N/A* [] 10 U.S.C. 2304(c)() [] 41 U.S.C. 253(c)()		23. SUBMIT INVOICES TO ADDRESS SHOWN IN <i>(4 copies unless otherwise specified)</i> Clause G.3	
24. ADMINISTERED BY <i>(If other than Item 7)</i> CODE 	25. PAYMENT WILL BE MADE BY CODE See Clause G.3		
26. NAME OF CONTRACTING OFFICER <i>(Type or print)</i> Theodore N. Turpin, Jr.		27. UNITED STATES OF AMERICA  <i>(Signature of Contracting Officer)</i>	28. AWARD DATE 9/27/04

IMP NT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

AUTHORIZED FOR LOCAL PRODUCTION
Previous edition is unusable

STANDARD FORM 33 (REV. 8-97)
Prescribed by GSA - FAR (48 CFR) 53.214(c)

Part I - The Schedule

Section B

Supplies or Services and Prices/Costs

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B.1 TYPE OF CONTRACT - ITEMS BEING ACQUIRED

This is a cost-plus-incentive fee (CPIF) completion-type contract set-aside for Small Business, for completing deactivation, demolition, and environmental restoration of the FFTF and designated support facilities on the Hanford Site. The DOE is committed to achieve accelerated closure that does not jeopardize safety and protection of workers, the public, or the environment. The contractor shall be responsible for planning, managing, integrating, and executing the work as described in Section C, Statement of Work (SOW). The contractor shall furnish all personnel, facilities, equipment, supplies, and services (except as furnished by the DOE) and otherwise do all the things necessary for performing in a safe, efficient, and effective manner.

B.2 AVAILABILITY OF FUNDS

Except as may be specifically provided to the contrary in the Section I Clause DEAR 952.250-70 entitled, *Nuclear Hazards Indemnity Agreement (JUN 1996)*, the duties and obligations of the U.S. Department of Energy (DOE) hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the U.S. Congress that DOE may legally spend for such purposes.

B.3 OBLIGATION OF FUNDS

Subject to Clause I-61, FAR 52.232-22, Limitation of Funds (APR 1984), the amount presently obligated under the Contract is \$900,000 for the period beginning 09/30/2004 and ending 09/30/2011.

B.4 FUNDING PROFILE

The contract will nominally be funded at \$43.5 million in fiscal year 2005 and at \$46.1 million per fiscal year beginning in fiscal year 2006, without adjustments for inflation. The total contract target cost and target fee shall not exceed the funding profile specified. If funding varies by more than 5% in a given fiscal year or more than \$5M over any three consecutive year periods from the prescribed funding level, the variance may be a basis for an equitable adjustment to the target cost and fee.

B.5 TARGET COST AND COMPLETION DATE

The total contract target cost and completion date are set forth below.

Target Cost (contract completion): \$217,346,694 (excluding fee)

Completion Date (physical completion): 09/30/2011

B.6 INCENTIVE STRUCTURE

The maximum fee on the cost incentive will not exceed 15% of the Target Cost.

The following cost incentive structure is established in association with the above target completion date:

Target Fee: \$17,174,082 (7.9% of Target Cost)
Maximum Fee: \$ 32,602,004 (15% of Target Cost)
Minimum Fee: \$ 6,520,401 (3% of Target Cost)

Share line:

In accordance with the clause in Section I entitled, Incentive Fee, the following shall apply. If the actual cost is less than the target cost, the Contractor shall earn fee in addition to the target fee in accordance with the cost share ratio below, up to the maximum fee. If the actual cost is greater than the target cost, the Contractor shall earn less than the target fee in accordance with the cost share ratio below, but not less than the minimum fee.

Government Share: 70%

Contractor's Share: 30%

B.7 PROVISIONAL FEE PAYMENT SCHEDULE AND ADJUSTMENTS

(a) Scheduled Provisional Fee Payment

- (1) The Contractor may submit requests for fee payments only following the end of a quarter. Prior to submitting the request, the contractor is required to submit the monthly report as required by Clause F.5, Management Products and Controls, paragraph (f)(2). Upon receipt of an acceptable request for provisional quarterly fee payment, the Contracting Officer will assess the need for adjustments based on the validated cost and the status of the major milestones. Fee payments are subject to written Contracting Officer approval.
- (2) Determination of Provisional Fee: For quarters prior to DOE approval of the Project Management Plan, and the approval and verification of the Contractor's Integrated Safety Management System (ISMS), the contractor will be paid an amount equal to 40% of the Provisional Fee for each quarter, as follows:

$$\text{Provisional Fee Payment} = \frac{\text{Target Fee (max 8\% of Target Cost)}}{\text{Estimated Quarters of Performance}} \times 0.40$$

For quarters after DOE approval of the Project Management Plan, and the approval and verification of the contractor's ISMS (including the quarter in which the baseline is approved), the contractor will be paid an amount equal to 75% of the earned fee for each quarter, as follows:

$$\text{Provisional Fee Payment} = \frac{\text{Target Fee (max 8\% of Target Cost)}}{\text{Estimated Quarters of Performance}} \times 0.75$$

(b) Provisional Quarterly Fee Payment Adjustments/Reductions

- (1) Adjustments in Fee Payments. Fee payments may be adjusted to the validated cost variances as shown in the formula below. Earned value performance is provided as required by Clause F.5, Management Products and Controls.

Fee Payment = {[BCWP₁ x TF + (Contractor Share x CV)] x .75 - (Cumulative Fee Previously Paid adjusted for any decrements)}.

Where CV is defined as (BCWP₁ – ACWP) and TF is the target fee rate.

Where BCWP₁ is the BCWP adjusted to account for differences in the contractor's estimate at completion (EAC), by the formula BCWP₁ = BCWP x (Target Cost ÷ EAC)

- (2) Reductions in Fee Payments.
- (i) Fee payments may be reduced in accordance with applicable contract clauses including, but not limited to, Clause B.8, Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, and Clause H.21, Key Personnel.
 - (ii) The total amount of fee payable under this contract including fee withholds shall not be less than the minimum fee.
 - (iii) In the event overpayment results from the payment of fee, the Contractor shall reimburse such overpayment to the Government upon demand, payable with interest in accordance with the Section I Clause FAR 52.232-17 entitled, Interest (JUN 1996).
 - (iv) Bankruptcy or Other Issues with Guarantor Company(ies). In order to assure the Contractor's ability to repay any fee payments determined to be in excess of the actual fee earned at the completion of the Contract, the Contracting Officer reserves the right to discontinue fee payments in the event a guarantor company files bankruptcy or is acquired by other owners, or other events arise with the Contractor's guarantor company(ies) jeopardizing DOE's ability to recover unearned fee payments.
 - (v) Repayment of Bankruptcy Reserve. In the event of a bankruptcy, acquisition by other owner, or any other event affecting the ability of the contractor to continue to perform its obligations under the contract, the Contractor shall within 60 days after the event, provide evidence satisfactory to the Contracting Officer that the bankruptcy, change in ownership, or other event does not affect the ability of the Contractor to continue to perform the obligations under the Contract, or affect a material Governmental or DOE interest. Upon receipt of such evidence, the Contracting Officer shall resume making payments of fee and shall release all fee payments withheld due to events described above.

**B.8 DEAR 952.223-76 CONDITIONAL PAYMENT OF FEE OR PROFIT –
SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED
INFORMATION AND PROTECTION OF WORKER SAFETY AND HEALTH
(JAN 2004)**

(a) General.

- (1) The payment of fee or profit (i.e., award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (i.e., Formerly Restricted Data and National Security Information) and relating to the protection of worker safety and health, including compliance with applicable law, regulation, and DOE directives. The term "contractor" as used in this clause to address failure to comply shall mean "contractor or contractor employee."
- (2) In addition to other remedies available to the Federal Government, if the contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information or relating to the protection of worker safety and health, the contracting officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.
- (3) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to the safeguarding of Restricted data or other classified information or relating to worker safety and health pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(b) Reduction Amount.

- (1) If in any period (see 48 CFR 952.223-76 (b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information or relating to the protection of worker safety and health, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26% nor greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range (see 48 CFR 904.402(c) and 48 CFR 923.7001(b)). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii), and (viii) apply to WS&H only):
 - (i) Degree of control the contractor had over the event or incident.
 - (ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

- (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
 - (iv) General status (trend and absolute performance) of: safeguarding Restricted Data and other classified information and compliance in related security areas; or of protecting WS&H and compliance in related areas.
 - (v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial WS&H standards are routinely practiced (e.g., Voluntary Protection Program Star Status).
 - (vi) Event caused by "Good Samaritan" act by the contractor (e.g., offsite emergency response).
 - (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain WS&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, WS&H programs).
 - (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in WS&H by use of lessons-learned and best practices inter- and intra-DOE sites.
- (2) (i) Except in the case of performance-based, firm-fixed-price contracts (see paragraph (b)(3) of this clause), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of **12** months to run sequentially for the entire term of the contract (i.e., from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.
- (ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.
- (3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the safeguarding of Restricted Data and other classified information and relating to protection of worker safety and health.

- (c) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failures relating to the contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:
- (1) First Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:
 - (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, or any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.
 - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, or any classification level of information in a Special Access SAP, Program (SAP), identified as sensitive compartmented information (SCI), or weapons data information identified as SCI, or high risk nuclear weapons-related data.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other classified information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (2) Second Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:
 - (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized

disclosure of Secret Restricted Data or other information classified as Secret.

- (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (c)(1)(iii) of this clause).
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
- (3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import will be considered third degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.
 - (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
 - (iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.
 - (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security

management system relating to the protection of Restricted Data and other classified information.

- (d) Protection of Worker Safety and Health. Performance failures occur if the contractor does not comply with the contract's WS&H terms and conditions, which may be included in the DOE approved contractor Integrated Safety Management System (ISMS). The degrees of performance failure under which reductions of fee or profit will be determined are:
- (1) First Degree: Performance failures that are most adverse to WS&H or could threaten the successful completion of a program or project. For contracts including ISMS requirements, failure to develop and obtain required DOE approval of WS&H aspects of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the WS&H aspects of the contractor's ISMS. The following performance failures or performance failures of similar import will be deemed first degree:
 - (i) Type A accident (defined in DOE Order 225.1A).
 - (ii) Two Second Degree performance failures during an evaluation period.
 - (2) Second Degree: Performance failures that are significantly adverse to WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. The following performance failures or performance failures of similar import will be considered second degree:
 - (i) Type B accident (defined in DOE Order 225.1A).
 - (ii) Non-compliance with approved WS&H aspects of an ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
 - (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.
 - (3) Third Degree: Performance failures that reflect a lack of focus on improving WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in potential breakdown of the contractor's WS&H system. The following performance failures or performance failures of similar import will be considered third degree:
 - (i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (e.g., Federal)

oversight and/or reported per DOE Order 232.1A requirements, or internal oversight of DOE O 440.1A requirements.

- (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant WS&H system breakdown.
- (iii) Non-compliances that either have, or may have, significant negative impacts to workers that indicate a significant WS&H system breakdown.
- (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

B.9 FINAL FEE DETERMINATION

- (a) Upon successful completion of work as specified in Section C, the Contracting Officer shall determine the total fee earned by the Contractor consistent with FAR Clause 52.216-10, Incentive Fee, and any reductions made under any other clause of the contract. If the amount of the total fee earned is less than the total amount of all fee payments previously made to the Contractor, the Contractor shall reimburse DOE the difference. The difference is subject to FAR Clause 52.232-17, Interest (Jun 1996). If the amount of total fee earned is more than the total amount of all prior fee payments previously made to the Contractor, DOE shall pay the Contractor the difference.
- (b) Termination. If this contract is terminated in its entirety, fee shall be payable to the Contractor consistent with paragraph (a) above. Nothing in this paragraph shall limit or restrict the application of FAR Clause 52.249-6, Termination (Cost-Reimbursement).

B.10 ALLOWABILITY OF SUBCONTRACTOR FEE

All fee to be paid to members of a Contractor team, including affiliates, identified in the offer must be included in the incentive fee payable under Clause B.6. The term affiliate is defined as: associated business concerns or individuals if, directly or indirectly (1) either one controls or can control the other; or (2) a third party controls or can control both. A “Contractor team arrangement,” as used in the FAR, means an arrangement in which 1) two or more companies form a partnership or joint venture to act as a potential prime contractor; or 2) a potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.

Part I – The Schedule

Section C

Statement Of Work

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C.1 FFTF CONTRACT OVERVIEW

The purpose of the FFTF Closure Project is to safely accelerate the deactivation and decommissioning the FFTF and its support structures within the 400 Area Property Protected Area and return it to reuse consistent with the industrial use designation of the site. Site closure must achieve release criteria and technical basis which meet the U. S. Environmental Protection Agency (EPA) risk level associated with industrial use.

- (a) The project includes: 1) maintaining a safe and compliant FFTF complex, 2) deactivation of the FFTF and support buildings and structures, 3) disposition of FFTF sodium, 4) decommissioning and demolition (and final closure) of the FFTF plant and the general-purpose support buildings located within the 400 Area of the Hanford Site, 5) project management and support, and (6) non-Hanford Site support of the FFTF Closure Project. The FFTF Security Area fence line defines the FFTF Closure Project's physical boundaries, (See Figure L.3). The major scope of each of these activities is further defined in Clause C.3.
- (b) This contract reflects the application of performance-based contracting approaches and techniques which emphasize results/outcomes and minimizes "how to" performance descriptions. The contractor has the responsibility for total performance under the contract, including determining the specific methods for accomplishing the work effort, performing quality control, and assuming accountability for accomplishing the work under the contract. Accordingly, this contract provides flexibility, within the terms and conditions of the contract, to the contractor in carrying out the work specified herein.
- (c) The contractor shall furnish the necessary personnel, facilities, equipment, materials, supplies, and services (except those defined and provided by the Government) to accomplish the scope of work. This scope of work is comprehensive in that the contractor is expected to perform necessary technical, operational and management functions to perform the work specified herein.
- (d) The primary location for the performance of the work under this contract is the DOE Hanford Site in southeastern part of the State of Washington. Some travel to other parts of the DOE complex in the continental United States may be required.

C.2 STATE OF PROJECT AT CONTRACT TRANSITION

Deactivation of FFTF is proceeding and the following provides relevant information on the condition of the facility and on the state of deactivation at the anticipated time of contract award. As such it contains some assumptions upon which the offeror shall base their proposal.

The sodium coolant is being maintained in a molten state in the reactor vessel and fuel storage vessels. Fuel has been removed from the reactor vessel and has been transferred to two sodium-filled fuel storage vessels or to above ground dry storage casks (Interim Storage Casks (ISCs)). The primary and secondary HTS loops and a portion of the reactor vessel have been drained of sodium. This sodium inventory (166,000 gallons) has been transferred to the Sodium Storage

Facility (SSF) and allowed to cool/solidify. Two immersion heaters are installed in the reactor vessel for temperature control and heat input to the reactor vessel. Section J, Appendix 3 provides a list of the FFTF systems/subsystems. All Group 0, 1, and 2 systems have been shut down. All remaining systems are being maintained operational to support sodium temperature, fuel storage, cover gas supply, Interim Examination and Maintenance (IEM) cell, heating and ventilating, etc. FFTF support facilities and equipment are being maintained operational.

- (a) The anticipated status of the fuel at contract transition is:
- (1) 133 irradiated fueled components reside in the sodium-filled fuel storage vessels and the IEM Cell. These include:
 - (i) The standard mixed-oxide (MOX) driver fuel assemblies, sodium bonded metal fuel assemblies, carbide fuel assemblies, and other miscellaneous fuel pins.
 - (ii) Seven (7) fuel assemblies containing breached fuel pins. Two of these assemblies (ACN-1 and PO-4) contain pins that failed to the extent that fuel erosion was detected by delayed neutron monitor signals. These two assemblies are to be disassembled and the failed fuel pins encapsulated.
 - (iii) Two additional fuel assemblies requiring disassembly in the IEM cell, SRF-3 and SRF-4.
 - (2) One unirradiated component is stored in the Test Assembly Conditioning Station that contains sodium-bonded pins.
 - (3) 87 sodium bonded and 3 NaK bonded unirradiated fuel pins are stored at Plutonium Finishing Plant (PFP).
 - (4) Up to 189 fueled components are stored in ISC's at the 200 East Area Canister Storage Building interim storage area.
- Note: Fifty-three (53) fuel assemblies have been washed, loaded into 8 ISCs and are stored at PFP. These assemblies are no longer part of the FFTF Closure Project.
- (b) Repairs and upgrades have been completed on three of the fuel handling machines; control upgrades have been made on the Sodium Removal System (SRS) and the Closed Loop Ex-Vessel Machine (CLEM), and repairs have been completed to the Solid Waste Cask (SWC). The fuel handling equipment and fuel offload systems are being maintained and are operational.
- (c) A contract has been placed for an additional 22 ISCs. It is anticipated the casks will begin arriving in late FY04. The ISC contract will be assigned to the FFTF Closure Project Contractor at the time of contract transition. Core Component Containers are stored on-site and available for fuel offload. No other existing subcontracts are anticipated to require transfer from the existing contractor to the FFTF Closure Contractor.

- (d) Together the plant and SSF contain about 260,000 gallons of radioactive sodium. The SSF is operational and capacity is available for the remaining plant sodium. The approximate inventories are made up of the following:
- (1) Approximately 166,000 gallons are stored in the SSF from the draining of three secondary loops, the secondary side of the Intermediated Heat Exchangers (IHXs), associated secondary loop piping, the primary loops, primary side IHX and a portion of the reactor vessel. Sodium residuals remain throughout the primary and secondary HTS loops.
 - (2) Approximately 44,000 gallons remain in the reactor vessel.
 - (3) Approximately 23,000 gallons reside in the Interim Decay Storage (IDS) vessel, its associated piping, and in the core component pots contained within the IDS vessel.
 - (4) Approximately 31,000 gallons reside in the Fuel Storage Facility (FSF) vessel and its associated piping systems.

In addition, approximately 40,000 gallons of radioactive Hallam and Sodium Reactor Experiment (SRE) sodium currently stored on the Hanford Site in the 200 West Area.

- (e) There are approximately 870 gallons of sodium-potassium (NaK) in three small cooling loops. The two loops in containment (primary cold trap N-5 and the IDS cooling loops) have been drained and flushed with sodium. The NaK from the two loops was mixed with the primary sodium. Approximately 400 gallons of NaK have been removed from the Fuel Storage Facility NaK cooling loop and NaK storage tank, and the NaK residuals remain under an inert blanket.
- (f) Three flux monitoring systems are installed in the plant, as follows:
- (1) Source Range Flux Monitoring (SRFM) System - Consists of 3 fission counters installed within the 3 Low Level Flux Monitor (LLFM) assemblies installed in the reactor vessel. The detectors for these counters each contain less than 10 grams of enriched U-235. These detectors are cylindrical in shape (3.54 inches in diameter, 18 inches in length).
 - (2) Secondary Power Range Flux Monitoring (SPRFM) System – This system consists of 3 separate Boron-10 compensated ion chambers installed within 3 dry thimbles located in the reactor cavity between the reactor guard vessel and the wall of the reactor cavity. These detectors are cylindrical in shape (3.54 inches in diameter, 24.75 inches in length).
 - (3) Wide Range Flux Monitoring (WRFM) System - This system consists of 3 separate fission counters installed within 3 dry thimbles located in the reactor cavity between the reactor guard vessel and the wall of the reactor cavity. The detectors for these counters each contain less than 10 grams of enriched U-235.

These detectors are cylindrical in shape (3.54 inches in diameter, 18 inches in length).

- (g) Shipment of FFTF sodium bonded fuel assemblies outside Hanford requires the use of an acceptable shipping container. The T-3 Cask is currently available to serve this function, however it is currently licensed only through 2006, its Certificate of Compliance (CoC) allows only for shipment of up to 18 sodium bonded pins (with a total of 200 grams sodium allowed). RL has requested a T-3 payload increase up to a full sodium bonded fuel assembly (169 pins and up to 1521 grams of sodium). DOE-HQ will process the review, approve the payload increase, and will issue a license certifying the T-3 Cask.

C.3 FFTF WORK SUMMARY

This section describes the work scope to be accomplished under this contract. The intent is to provide the best available information on “what” work may proceed with regard to Tri-Party Agreement (TPA) commitments and subject to the National Environmental Policy Act (NEPA), but not to prescribe “how” or “when” individual work scope elements may be accomplished. The contractor has the flexibility to develop the project structure and to sequence the work, subject to NEPA requirements, to optimize the project schedule to achieve safe, cost-effective and accelerated closure of the site.

Physical completion of the FFTF Closure Project is defined as: 1) complete the deactivation and decontamination of FFTF and support facilities, 2) complete removal and shipment of remaining fuel and of bulk sodium to appropriate storage, 3) complete the decommissioning and demolition of FFTF and all facilities within the area defined by the FFTF Security Area fence line (listed in Section J, Appendix 4), 4) complete the disposition of all the bulk sodium including the approximately 40,000 gallons of radioactive Hallam and Sodium Reactor Experiment (SRE) sodium currently stored on the Hanford Site in the 200 West Area, 5) complete environmental restoration of the area including backfill, and stabilize consistent with the industrial use designation of the site, and 6) complete a confirmation of site closure compliant with the release criteria.

The Project is structured to continue deactivation work (including major contract activities identified below as (a) Maintain a Safe and Compliant FFTF Complex, (b) Deactivate the FFTF Complex, and (c) Disposition FFTF Sodium and Sodium Traps) primarily in accordance with the May 1995 FFTF Shutdown Environmental Assessment and finding of No Significant Impact (see Section J App. 5). Work defined in C.3 (d) for decontamination, decommissioning and dismantlement of the FFTF will follow and includes the entombment of the below grade portion of the FFTF Reactor Containment Building with the de-fueled reactor. On July 8, 2003, DOE committed to perform a National Environmental Policy Act (NEPA) Environmental Impact Statement (EIS) to evaluate reasonable alternatives, including No Action and a preferred alternative, for the final disposition (i.e. decommissioning and dismantlement) of the FFTF. DOE shall decide and announce the end state in a Record of Decision (ROD) within 12 to 18 months after award of this contract. A contract modification may be required before proceeding with decommissioning consistent with the conditions of the EIS ROD. Until the approval of the

ROD the Contractor is authorized to continue deactivation activities consistent with existing NEPA decisions (see Section J App. 5).

The Contractor will be responsible for providing data packages (environmental information) to support EIS preparation. The estimated level of support is two technical staff over a period of twelve (12) months.

The following lists Major Contract Activities:

- (a) Maintain a Safe and Compliant FFTF Complex. Under this activity, the contractor shall:
 - (1) Maintain facilities listed in Section J, structures, operating systems and equipment, and monitoring systems in compliance with applicable directives and regulatory documents until the facilities are demolished.
 - (2) Prepare and package waste for disposition as required and dispose as appropriate. DOE will make available Hanford Site disposal facilities on a cost reimbursement basis.
 - (3) Maintain radiological control and access control to ensure personnel safety.
- (b) Deactivate the FFTF Complex. Under this activity, the contractor shall:
 - (1) Clean and package FFTF fuel for approved storage:

FFTF fuel assemblies must be prepared and delivered to approved storage locations. While DOE has not made the final decision regarding the ultimate disposition of sodium/NaK bonded fuel, the contractor shall assume that this fuel will be delivered to ANL-W for processing. Interim storage of sodium/NaK bonded fuel may be provided at an approved Hanford dry storage location, awaiting T-3 cask payload upgrades and final DOE disposition decision. The balance of the irradiated fuel is to be delivered to the Canister Storage Building Interim Storage Area (ISA) located in Hanford's 200E Area. The fueled components include:

 - (i) 133 irradiated fuel components contained in sodium-filled fuel storage vessels require cleaning.
 - (ii) One unirradiated component (MFF-8A), containing only sodium bonded fuel pins, is stored in the Test Assembly Conditioning Station.
 - (iii) 90 unirradiated fuel pins (87 sodium bonded and 3 NaK bonded) are anticipated to be shipped to FFTF in FY-05
 - (2) Relocate ISCs containing FFTF irradiated fuel from the 400 Area to the Hanford Site Canister Storage Building ISA. Upon receipt and acceptance of the ISCs

containing the fuel at the ISA, responsibility transfers from the Contractor to the storage facility operator.

- (3) Drain sodium and NaK inventories from the primary systems and reactor vessel to the maximum extent practical. For sodium residual disposition see Section C.3 (c)(2).
 - (4) Deactivate and prepare the FFTF plant, associated support buildings, and associated operating systems and equipment for decommissioning. Shutdown all auxiliary systems not required for sodium residual disposition or decommissioning.
- (c) Disposition FFTF Sodium, NaK, and Cold Traps. Under this activity, the contractor shall:
- (1) Disposition the approximately 300,000 gallons of bulk sodium from FFTF, Hallam, and SRE. Approximately 40,000 gallons of the 300,000 gallons are stored outside of the FFTF Closure Project's physical boundaries in the 200 Area.
 - (2) Remove and disposition sodium and NaK residuals from the FFTF plant, FSF, SSF vessels, Hallam tanks and SRE containers. Bulk sodium transportation may proceed only after completion of the FFTF Final Disposition EIS and issuance of the ROD.
 - (3) Remove package and store the primary cold trap, the cesium trap, and two sodium vapor traps. These components are expected to have dose rates of several tens of R/hr to one hundred R/hr on contact. These traps shall be shipped to a permitted storage location on the Hanford Site pending final disposition. The Contractor is not responsible for final disposition.
- (d) Decommission and demolish the FFTF and support buildings: Decommissioning takes place following deactivation and may include surveillance and maintenance, decontamination or demolition as necessary. Complete the decommissioning and demolition work scope in accordance with applicable state and federal regulations, DOE Orders, and the FFTF Final Disposition EIS and ROD (See Section J, Appendix 5).

The entombment of FFTF utilizes the below grade portion of the Reactor Containment Building as part of the entombment structure. With the containment dome above the 550' level dismantled and removed, and the containment building below the 550' level filled with grout or other material(s) that immobilizes the remaining radiological and chemical hazards to the maximum extent practical, an engineered barrier, shall be used to cover the containment area. The barrier, together with the lower containment superstructure, the containment internal structures, and the immobilization matrix (e.g. grout or sand) would form the entombment structure.

Under this activity, the contractor shall:

- (1) Demolish and disposition the FFTF and support buildings and structures (See Section J, Appendix 4).
- (2) Support buildings and structures shall be demolished to three-feet below grade and backfilled to grade. FFTF buildings other than the Reactor Containment Building (building 405) shall also be removed to a minimum of three feet below grade and backfilled to grade except where the entombment cap extends beyond the Reactor Containment Building periphery.
- (3) Disposition support systems and equipment in the FFTF and support buildings (See Section J, Appendix 3).
- (4) Entomb the FFTF reactor facility:
 - (i) Remove and disposition containment dome above 550' elevation
 - (ii) Leave reactor vessel with internals in place
 - (iii) Move excess contaminated equipment into lower containment cells
 - (iv) Grout all lower containment free spaces
 - (v) Install an environmentally acceptable engineered barrier over the entombed remains.

Removal Alternative - The following describes an alternate list of activities for the above element C.3(d)(4) to define the actions which may be needed if the ROD concludes that removal is the appropriate end point for decommissioning.

- (i) Remove and disposition containment dome above 550' elevation
- (ii) Remove reactor vessel with internals and relocate to 200 Area burial grounds
- (iii) Remove radioactive contaminated equipment, components, piping and materials including:
 - (A) Intermediate Heat Exchangers
 - (B) Primary Pumps
 - (C) Primary isolation valves
 - (D) Primary overflow and storage tanks (These may be easier to decontaminate than remove)
 - (E) IEM cell equipment
 - (F) Long test assemblies (28' and 40')
 - (G) Interim Decay Storage Tank

Note that non-radioactive lower containment structure, equipment and major components need not be removed such as:

- (1) Reactor guard vessel,
- (2) Primary pump guard vessels,
- (3) Intermediate Heat Exchanger guard vessels,
- (4) H&V systems,

- (5) Mobiltherm Piping,
 - (6) In-Containment Chill Water Piping,
 - (7) Aqueous film forming foam (AFFF) System tank
-
- (iv) Remove hazardous materials (asbestos, lead, depleted uranium, etc.)
 - (v) Grout all lower containment free spaces
 - (vi) Backfill over the remaining containment structure

The above list of six activities (i – vi) completes the description supporting the Removal Alternative.

- (5) Comply with radiological release criteria in accordance with the requirements of DOE Order 5400.5, Radiation Protection of the Public and the Environment.

For radiological release of real property (i.e., land surfaces and structures) the cleanup criteria shall be based on the EPA risk range of 10^{-4} to 10^{-6} (generally interpreted as 15 millirem per year to the maximally exposed individual). Specific cleanup criteria shall be developed using the appropriate RESRAD code, e.g., RESRAD, RESRAD-BUILD, DOE-approved code parameters, and DOE-approved future use scenarios. Sampling and analysis to demonstrate compliance with these specific cleanup criteria shall be performed in accordance with the guidance in the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM). A preliminary risk assessment for entombment is included in “Risk Assessment for the Fast Flux Test Facility Entombment Option”, August 21, 2003.

- (6) Disposition all waste: (includes but is not limited to non-hazardous and non-radioactive waste; hazardous waste, including asbestos and polychlorinated biphenyls; low-level radioactive waste; and low-level miscellaneous waste to approved on-site or off-site disposal facility(ies)). Waste minimization pollution prevention programs will be adhered to the maximum extent practical, cost effectively and safely.

The contractor shall determine the disposition (disposal or excess) of equipment and material that is no longer required. For radiological release of materials and equipment, the release criteria shall be based on either the generic guidelines in DOE Order 5400.5, or specific DOE-approved authorized limits. Due to concerns regarding volumetric contamination of material, a DOE Secretarial moratorium has been placed on the radiological release of material. This release limitation is being addressed in such documents as the Draft Programmatic EIS for Disposition of Scrap Metals (DOE/EIS- 0327). Until such time as the moratorium is lifted, the contractor must operate to ensure that radiation is disposed in an approved radioactive waste disposal facility.

Radioactive contaminated/hazardous materials may be disposed to the Environmental Restoration Disposal Facility (ERDF) located in the 200-East

Area, through appropriate regulatory processes. Specifically, a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) ROD or Engineering Evaluation/Cost Analysis (EE/CA) with an Action Memorandum approved by the regulators is required to dispose waste at ERDF. The contractor may choose alternative disposal solutions, and is responsible for the preparation, shipment, and disposal of all waste in support of its disposition.

- (e) FFTF Closure Project, Project Management: Under this activity, the contractor shall:
 - (1) Provide the management and direction of the FFTF Closure project. This includes the project manager and his staff, project control, and reporting functions.
 - (2) Provide those support functions that enable all other activities to be performed.
 - (3) Provide a project Close-out and Decommissioning Project Final Report, including all FFTF documentation files and records.

(f) Offsite FFTF Closure Project Support

Successful completion of the Project will require coordination with organizations outside of the Hanford Site. The most significant offsite coordination may involve disposition of sodium and fuel. The following defines the areas for which support may be required for activities that enable contract workscope performance. The contractor has the responsibility for determining the level of support necessary.

- (1) Bulk sodium disposition: See C.3(c) above. If the contractor chooses to convert the sodium at ANL-W Sodium Processing Facility, support requirements are identified in the Hanford Site Sodium Disposition Trade-off Study, F0000-0079-ES-00, April 2002.
- (2) Sodium/NaK bonded fuel disposition: See C.3(b) above. The contractor shall coordinate with ANL-W to facilitate the transfer and acceptance of sodium bonded fuel. (NOTE: Funding support to ANL-W is required for sodium/NaK bonded fuel receipt and handling; processing of this fuel at ANL-W is not part of this project.)

C.4 GOVERNMENT FURNISHED SERVICES/ITEMS

Clause H.6, *Hanford Site Infrastructure, Utilities, Data Systems, and Stewardship*, provides a list of government furnished infrastructure, utilities, and data systems on the Hanford Site. The Contractor shall have use of the DOE RL Property Management System. All equipment, supplies and other materials needed to perform this work and not included in the above shall be supplied by the contractor.

- (a) Within ninety (90) days after the effective date of this contract and by September 1 of each year, the Contractor shall provide the Contracting Officer an annual projection of needed Government Furnished Services/Items (GFS/I) for the following fiscal year.

- (b) Quarterly Updates: The Contractor shall provide quarterly updates to the projected GFS/I to the Contracting Officer. Amendments to the projection must be provided to the Contracting Officer 45 days in advance of the need date to be considered timely.
- (c) DOE will utilize the projected information to enable timely review of each Contractor submittal. If the contractor's request cannot be supported, DOE will notify the contractor.
- (d) DOE shall approve or disapprove the contractor's deliverables specified in Section F, Table F-1 within 60 calendar days of contractor submittal or as specified.

C.5 ACRONYMS

<u>Acronym</u>	<u>Definition</u>
AB	Authorization Basis
ACES	Access Control Entry System
AFFF	Aqueous Film Forming Foam
ANL-W	Argonne National Laboratories - West
ANSI EIA	American National Standards Institute Electronic Industries Alliance
ARAR	Applicable or Relevant and Appropriate Requirements
BLTC	Bottom Loading Transfer Cask
BPA	Bonneville Power Administration
B&R	Budget & Reporting
CA	Cost Analysis
CAGE	Commercial and Government Entity
CAIRS	Computerized Accident/Incident Reporting System
CAPS	Cell Atmosphere Processing System
CCCS-S	Core Component Conditioning Station-South
CCRC	Centralized Consolidated Recycling Center
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulation
CLEM	Closed Loop Ex-Vessel Machine
CLIRA	Closed-Loop In Reactor Assembly
CLS	Closed-Loop System
CO	Contracting Officer
CoC	Certificate of Compliance
CRT	Condensate receiver tank
CX	Categorical Exclusion
D4	Deactivation, Decontamination, Decommissioning & Disposal
DC	Direct Current
D&D	Decontamination and Decommissioning
DEAR	Department of Energy Acquisition Regulations
DOD	Department of Defense
DOE	Department of Energy

DSA	Documented Safety Analysis
DHX	Dump Heat Exchanger
EA	Environmental Assessment
ECAS	Environmental Cost Analysis System
EDS/DAS	Experimenters Data System/Data Acquisition System
EDS/CALC	Experimenters Data System/Calculational Computer
EE	Engineering Evaluation
EE/CA	Engineering Evaluation/Cost Analysis
EDMS	Engineering Data Management System
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act of 1986
ERDF	Environmental Restoration Disposal Facility
ESH&Q	Environment, Safety, Health, and Quality Assurance
FAR	Federal Acquisition Regulation
FAS	Financial Accounting Standard
FFTF	Fast Flux Test Facility
FHI	Fluor Hanford, Incorporated
FMEF	Fuels and Materials Examination Facility
FOCI	Foreign Ownership, Control, or Influence
FONSI	Finding of No Significant Impact
FSAR	Final Safety Analysis Report
FSF	Fuel Storage Facility
FTRIA	Flow and Temperature Removable Instrumentation Assembly
FVA	Floor valve adapter
FY	Fiscal Year
GFI	Government Furnished Items
GFS	Government Furnished Services
GSA	General Services Administration
HAMTC	Hanford Atomic Metal Trades Council
HANDI	Hanford Data Integrator
HDTs	Hanford Document Tracking System
HEIS	Hanford Environmental Information System
HEWT	Hanford Employees Welfare Trust
HGIS	Hanford Geographical Information System
HTS	Heat Transfer System
H&V	Heating and Ventilation
HVAC	Heating, Ventilation, and Air Conditioning
IEM	Interim Examination and Maintenance
IDS	Interim Decay Storage
IHX	Intermediated Heat Exchanger
IRC	Internal Revenue Code
IS	Information Security
ISA	Interim Storage Pad
ISC	Interim Storage Casks

ISMS	Integrated Safety Management System
ISVAC	Integrated Site, Vegetation and Animal Control Project
JCS	Job Control System
kV	KiloVolts
LMSI	Lockheed Martin Services, Inc.
LPMS	Loose Parts Monitoring System
L&I	Washington State Department of Labor & Industries
MASF	Maintenance and Storage Facility
MC&A	Material Control and Accountability
MOTA	Materials Open Test Assembly
MOX	Mixed-Oxide
MTCA	Model Toxics Control Act
NaK	Sodium Potassium
NTRC	National Resources Trustee Council
NEPA	National Environmental Policy Act
NM	Nuclear Material
NOAV	Notice of Alleged Violation
NOV	Notice of Violation
NTCRA	Non-Time Critical Removal Actions
OPSEC	Operational Security
ORP	Office of River Protection
ORR	Operational Readiness Review
PAA	Price-Anderson Act
PAAA	Price-Anderson Amendment Act
PBS	Project breakdown structure
PCB	Polychlorinated Biphenyl
PDS	Primary Data System
PFP	Plutonium Finishing Plant
PHF	Plug Handling Fixture
PNNL	Pacific Northwest National Laboratory
QAPS	Radioactive Argon Processing System
QA/SP	Quality Assurance/Surveillance Plan
RCB	Reactor Containment Building
RCRA	Resource Conservation and Recovery Act
RCW	Revised Code of Washington
RDT	Reactor Development Technology
RFP	Request for Proposals
RICS	Refueling Inventory Control System
RMIS	Record Management Information System
RL	Richland Operations Office
RSB	Reactor Service Building
ROD	Record of Decision
SAMS	Sunflower Asset Management System
SEPA	State Environmental Policy Act
S & M	Surveillance and Maintenance

SNM	Special Nuclear Material
SPSS	Shielding Plug Storage Station
SRE	Sodium Reactor Experiment
SRS	Sodium Removal System
SSF	Sodium Storage Facility
SWC	Solid Waste Cask
SWITS	Solid Waste Information and Tracking System
TACS	Test Assembly Conditioning Station
TPA	Tri-Party Agreement
TSR	Technical Safety/Requirement
VAC	Volts Alternating Current
WBS	Work Breakdown Structure
WIDS	Waste Information Data System

Part I - The Schedule

Section D

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D.1 PACKAGING

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practices and adequate to ensure acceptance by common carrier and safe transportation at the most economical rate(s).

D.2 MARKING

- (a) Each package, report or other deliverable shall be accompanied by a cover letter which:
 - (1) Identifies the contract by number under which the item is being delivered.
 - (2) Identifies the deliverable item and the specific contract reference that requires the delivered item(s).
- (b) For any package, report or other deliverable being delivered to a party other than the Contracting Officer, a copy of the cover letter shall be furnished to the Contracting Officer.

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Section E

Inspection and Acceptance

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**E.1 FAR 52.246-5 INSPECTION OF SERVICES–COST REIMBURSEMENT
(APRIL 1984)**

- (a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may-
 - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - (2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may-
 - (1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or
 - (2) Terminate the contract for default.

**E.2 FAR 52.246-13 INSPECTION-DISMANTLING, DEMOLITION, OR REMOVAL
OF IMPROVEMENTS (AUG 1996)**

- (a) Unless otherwise designated by the specifications, all workmanship performed under the contract is subject to Government inspection at all times and places where dismantling or demolition work is being performed. The Contractor shall furnish promptly, and at no increase in contract price, all reasonable facilities, labor, and materials necessary for safe and convenient inspection by the Government. The Government shall perform inspections in a manner that will not unduly delay the work.

- (b) The Contractor is responsible for damage to property caused by defective workmanship. The Contractor shall promptly segregate and remove from the premises any unsatisfactory facilities, materials, and equipment used in contract performance, and promptly replace them with satisfactory items. If the Contractor fails to proceed at once in a workmanlike manner with performance of the work or with the correction of defective workmanship, the Government may-
 - (1) By contract or otherwise, replace the facilities, materials, and equipment or correct the workmanship and charge the cost to the Contractor; and
 - (2) Terminate for default the Contractor's right to proceed. The Contractor and any surety shall be liable, to the extent specified in the contract for any damage or cost of repair or replacement.

E.3 ACCEPTANCE

DOE will develop and provide to the contractor a Quality Assurance/Surveillance Plan (QA/SP) for this contract which will establish the process DOE will use to verify Contractor performance in accordance with the performance standards and expectations specified in this contract. The QA/SP will summarize the performance standards, expectations and acceptable quality levels for each task; describe how performance will be monitored and measured;

- (a) Acceptance: declaration of physical completion. Upon physical completion of the contract as set forth in Section C.3, the Contractor shall prepare a letter declaring that work has been physically completed. After submittal of the letter, the Government will, within ninety (90) calendar days, accept the project as complete or provide the contractor with a final definitive punch list of material deficiencies, which preclude the Government from accepting the physical completion of the contract. Following the Government's notification, the Contractor shall correct all identified deficiencies and submit a Final Declaration of Physical Completion. The Contracting Officer will determine final acceptance.
- (b) Acceptance of all work and effort under this contract (including "Reporting Requirements," if any) shall be accomplished by the Contracting Officer, or any duly designated representative, as designated in writing from time to time by the Contracting Officer.

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Section F

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F.1 PERIOD OF PERFORMANCE

The transition period of the contract begins on the date of contract award and continues for a period not to exceed 60 calendar days. The period of performance for the work specified in Section C of this contract shall immediately commence following the completion of transition. The date for physical completion of the contract is set forth by contract clause B.5. The “physical completion” of the contract as that term is used in contract clause I.21, Incentive Fee, is defined in contract clause C.3.

F.2 PRINCIPAL PLACE OF PERFORMANCE

The principal place of performance of this contract shall be the Hanford Site, near Richland, Washington, and other facilities as directed by the Contracting Officer.

F.3 DELIVERIES

All products, reports, or services under this contract shall be delivered to the Contracting Officer, or any other duly authorized Government representative as designated in writing by the Contracting Officer. The Contractor shall prepare and submit the plans and reports listed in Clause F.5, *Management Products and Controls*, below.

F.4 FAR 52.242-15 STOP-WORK ORDER (AUG 1989) - ALT 1 (APR 1984)

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Termination clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if:
 - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

- (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

F.5 MANAGEMENT PRODUCTS AND CONTROLS

This section describes the management products and controls required during the Contract period.

- (a) **Project Management Plan:** The Contractor shall prepare a Project Management Plan (PMP) describing the approach for managing and controlling the project. The PMP shall be submitted for DOE approval (Table F-1, Item 1.2), and shall include two distinct sections: the description of the Project Control System and the Project Baseline. Content and information requirements for the Project Control System and the Project Baseline are described below. Project Management Plan updates shall be submitted for DOE approval when significant changes are required.
- (b) **Project Control System:**
 - (1) **Project Control System Requirements:** The Contractor shall establish, maintain, and use a Project Control System, which supports successful completion of the contract work during all activities (e.g., remediation, decontamination, demolition, waste disposition). The System must produce disciplined and accurate planning, budgeting, reporting, and change control data. The Contractor shall provide all necessary information and support related to the FFTF Closure Project to enable DOE to proceed with the Critical Decision process (DOE Order 413.3) and to enable DOE to meet the data requirements of the Integrated Planning, Accountability, and Budgeting System, except the module on technology-related data.
 - (2) **Project Control System Description:** As part of the PMP, the Contractor shall provide a description of the Project Control System. Upon approval of the PMP by the Contracting Officer, the Contractor shall fully implement the Project Control System. The description of the Project Control System shall articulate the management processes and controls utilized to manage and control work, complete Contract requirements, and meet the requirements of ANSI EIA-748, Earned Value Management Systems. The description of the Project Control System shall, at a minimum, include:

- (i) Definition of the management processes that assure disciplined and accurate planning, budgeting, reporting and change control.
- (ii) A clear definition of what information makes up the baseline and where that information resides.
- (iii) A clear articulation of the methodology to be utilized for determining earned value.
- (iv) The organizational breakdown structure, including roles and responsibilities of each major organization and identification of key management personnel.
- (v) The organizational and management interfaces between the Contractor and RL, and other Hanford Site contractors (e.g. 200 Area Waste Operations), and the process to manage the interfaces.
- (vi) The approach the Contractor will use to implement project control processes including:
 - (A) Baseline change control;
 - (B) Contract management;
 - (C) Performance measurement;
 - (D) Information and reporting;
 - (E) Interface management;
 - (F) Work authorization;
 - (G) Work management;
 - (H) Risk management;
 - (I) Contingency management;
 - (J) Construction project management; and
 - (K) Communications and stakeholder involvement.
- (vii) The configuration management process that controls changes to the physical configuration of project facilities, structures, systems and components in compliance with ANSI/EIA-649, *National Consensus Standard for Configuration Management*.

- (viii) The value engineering process that uses systems engineering tradeoffs and functional analyses to identify alternate means of achieving the same function at a lower life-cycle cost.
 - (ix) The scope, cost, and schedule baseline development process and the hierarchy of documents/data systems to be used to describe and maintain that baseline.
 - (x) A brief summary of any supporting procedures and plans to be used to implement the project including applicable engineering standards, practices, or guides.
- (3) **Project Control System Changes:** A revised description of the Project Control System shall be submitted for DOE approval when significant changes are required in management processes. The Contracting Officer may direct additional compliance reviews to determine whether the Contractor is producing accurate planning, budgeting, reporting, and change control data. The Contractor shall provide the DOE Contracting Officer or designated representatives with access to all pertinent records, data, and plans for purposes of initial approval, approval of proposed changes, and the ongoing operation of the project control system.
- (c) **FFTF Closure Project Baseline:**

Project Baseline Requirements: The Contractor shall develop and maintain an integrated and traceable scope, schedule, and cost baseline for the FFTF Closure Project to be delivered to DOE for approval (Table F-1, Item 1.2). “Traceable” entails both vertical traceability from the lowest to the highest levels of detail within the WBS and lateral traceability from the technical scope definition to the schedule and cost estimate. The lifecycle of the baseline covers the entire FFTF Closure Project as described in Section C. The baseline shall include: FFTF Closure Project work scope descriptions, an estimate of the schedule to implement the project work scope, and an estimate of the cost to implement project work scope on the projected schedule. An assessment of the risks to achieving the baseline is to be addressed as part of the schedule and cost estimate description. FFTF Closure Project Baseline summary information at the PBS level related to the technical work scope, schedule and cost shall be included in the PMP.

The FFTF Closure Project Baseline shall contain sufficient scope, schedule, and cost information (including contingency) to support development and maintenance of an integrated RL Baseline and the annual budget process. The activities of the detailed cost estimate must be clearly linked to the schedule activities through the WBS. The cost estimate summary information must also be directly traceable to supporting detailed cost estimates through use of the same structure. This WBS must be summarized to the Level 3 element of the DOE-RL WBS. The FFTF Closure Project Baseline shall, at a minimum, contain:

- (1) **Scope:**

- (i) A key assumptions list including assumptions made by the Contractor, especially those indicating performance or milestones to be accomplished by the DOE or Hanford Site Contractors;
 - (ii) DOE actions and decision points describing all DOE activities (e.g. all DOE-required action items) including Critical Decisions (DOE Order 413.3), other decision points, and regulatory actions to be accomplished for the Contractor's plan to be successful. The activities, decision points, and regulatory actions shall be specifically included in both the top-level or lower-level logics;
 - (iii) The work breakdown structure (WBS) including "dictionary" descriptions of elements of work for the entire WBS at the Cost Account Level; and
 - (iv) The clear identification of specific facilities and the closure functions to which they are related.
- (2) Schedule: Each activity box in the top-level logic shall be a traceable rollup from the contractor's more detailed schedules utilized to manage and control the execution of the work. There shall be a one-to-many relationship between the top-level and the lower-level logics. The schedule updates shall be provided to DOE as an electronic file on CD-ROM. For each fiscal year, the contractor shall designate a minimum of two major milestones which may be used by the DOE to measure progress and contractor performance in association with F.5(f)(2)vii below. Additionally, the Contractor shall provide DOE monthly schedule updates and shall work with RL to resolve schedule discrepancies. The schedule shall:
- (i) Be logic driven and show the duration of tasks, milestones, and critical path;
 - (ii) Show the relationships among FFTF Closure project activities and other RL activities relevant to the FFTF Closure Project, and depict the relationships by facility and interdependencies among the top-level FFTF Closure activities;
 - (iii) Include a detailed technical description of the scope to be performed for each of the WBS elements. This shall include, as a minimum, performance specification(s) and the work activities required, but it shall also identify any work specifically excluded, any constraints or special conditions, ground rules, assumptions, and drivers;
 - (iv) Contain sufficient levels of detail to promote understanding of the logical sequence of activities and identify all interfaces between performing organizations;
 - (v) Be resource loaded with cost, labor hours, and quantities, resulting in a well defined cost profile at all levels of the WBS; and

- (vi) Be clearly tied to the technical scope baseline at all levels.
- (3) Cost: The FFTF Closure Project Baseline cost shall be equivalent to target cost set forth by Clause B 5, Target Cost and Completion Date, and shall include a summary of the project cost baseline at the PBS level by fiscal year, a life-cycle cost estimate by fiscal year at one level below the PBS level, and a monthly spending plan for the current fiscal year (FY) at one level below the PBS. Supporting estimates must be structured and formatted to clearly display the typical elemental costs (e.g. direct costs for labor, materials, subcontracts; departmental overheads; General and Administrative, contingencies; and escalation) within the estimate. The estimate package will be assembled in a manner that displays the information in a traceable and logical progression from estimated resource requirements of an individual activity to the total estimated cost of a Project Baseline Summary. The FFTF Closure Project Baseline and supporting documentation package shall be submitted both as a written report and electronically containing the following information:
 - (i) Description of the type and purpose of the estimate being performed;
 - (ii) Description of the methodology of how the estimate was developed;
 - (iii) Description of the entire WBS and a description of the methodology for its development. The WBS shall be developed below the existing DRL WBS (level three, which are the DOE Headquarters Project Baseline Summaries);
 - (iv) Explanation and description of overhead and general and administrative rates, as well as the elements included;
 - (v) Full delineation of any use of productivity or related factors clearly identifying when and where used and the basis for the utilization;
 - (vi) Written analysis of how contingency/risk was determined. This includes all pertinent information necessary to understand and perform the calculations. Contingency shall be clearly discernable from all other costs. The probability distribution curve and the cumulative probability distribution curve reflecting the costs used to establish the FFTF Closure Project Target Costs shall be described;
 - (vii) Basis of escalation, if applicable;
 - (viii) Names of the key preparers of the estimate; and
 - (ix) Basis of estimate information shall be provided at the level at which it was derived.
- (d) Change Control Process: The Contractor shall implement disciplined change control according to the methods approved in the Project Control System section of the PMP.

Change control and trend monitoring shall be implemented concurrent with DOE approval of the FFTF Closure Project PMP.

- (e) Target Cost and Fee Change: Any changes to target cost or fee shall be executed only by a Contract modification pursuant to the Contract terms and conditions.
- (f) FFTF Closure Project Reporting
 - (1) Baseline Reporting System: The Contractor shall develop a reporting system that reports project performance on the technical work scope, schedule, and cost profile defined in the FFTF Closure baseline at a level agreed to by DOE. The requirements and procedures for this system shall be defined in the PMP.
 - (2) Monthly Status Reports: The Contractor shall prepare monthly written status reports, and transmit them to DOE by the 15th calendar day of the following month for information (Table F-1, Item 1.3), commencing the first month after Contract execution. Status reports shall include narrative and performance curves (earned value based on the schedule) for the cost and job hour status (e.g., planned, actual, and forecast percents complete). The cost and schedule variances shall be identified and addressed. Status reports shall include data for the total project cost and performance for the major WBS elements. Each quarter a briefing will accompany the report. The monthly status report and briefings shall include the following:
 - (i) A comparison of the amount of work completed against the project baseline (e.g. actual versus planned for fuel offloaded, actual versus planned sodium drained, number of buildings demolished, amount of contaminated soil disposed of), including an earned value analysis, major project milestones, critical path analysis, and corrective actions;
 - (ii) Potential problems, impacts, and alternative courses of action, including staffing issues;
 - (iii) Status of decisions, including DOE decisions, information requirements for those decisions, and ninety-day forecasts for major milestones;
 - (iv) A baseline schedule (a statused, resource loaded cost performance measurement schedule) reflecting progress against the baseline. The schedule shall reflect all approved changes to date. The schedule shall include actual information, including but not limited to, start and finish dates; hours expended; actual costs incurred; percent complete; and forecast dates;
 - (v) Current period, cumulative and completion information in terms of Budgeted Cost of Work Scheduled (BCWS), Budgeted Cost of Work Performed (BCWP), Actual Cost of Work Performed (ACWP) including a summary of cost trends, and contingency utilization;

- (vi) A change control section summarizing the scope, technical, cost, and/or schedule impacts resulting from any implemented actions. A section shall be included discussing any known or pending change control submittals; and
- (vii) Each quarter, in conjunction with the provisional fee payment request as described in Clause B.7:
 - (A) Provide completion progress including schedule milestones, BCWP, BCWS, ACWP, Estimate at Completion (EAC), and deliverables. Performance against earned value as well as identified scheduled milestones shall be considered when determining adjustment to the provisional fee payments.
 - (B) Provide an analysis of cost trends, schedule trends, project float, manpower skills and other resources, and contingency utilization.
- (3) Cost Reporting: The Contractor shall report the actual cost of remediation work conducted as part of this contract using the Environmental Cost Analysis System (ECAS). The cost of a completed remediation activity (e.g., D⁴ of a building) shall be reported within 12 months of completion. The ECAS may be accessed at <http://ecas.netl.doe.gov>.
- (4) Occurrence Reporting: The Contractor shall adhere to occurrence reporting requirements listed in Section J, with Hanford Site specific requirements and methods for notification (Table F-1, Item 1.4).
- (5) Environment, Safety, and Health Reporting: The Contractor shall report all events and information specified in DOE Order 231.1, *Environment, Safety and Health Reporting*. The Contractor process will accumulate and provide a single report responding to required information for both the Contractor and all subcontractors.

Table F-1 Deliverables

Item No.	Deliverable	Reference	Action Required	Action Party	Point of Delivery	Contract Due Date
1.1	Transition Plan	F.6	A	D	CO	11 Days after award
1.2	Project Management Plan	F.5	A	D	CO	60 days after contract award with updates as required
1.3	Monthly Status Report	F.5(f)(2)	I	D	CO	15 th day of each subsequent month

Item No.	Deliverable	Reference	Action Required	Action Party	Point of Delivery	Contract Due Date
1.4	Occurrence Reporting	F.5(f)(4)	A	D	FR	as required
1.5	ES&H Reporting	F.5(f)(5)	I	D	CO	as required
1.6	ISMS Description	F.5(h)	A	D	CO	90 days after contract award with updates as required
1.7	Quality Assurance Program Plan	H.1(b)	A	D	CO	30 days after award
1.8	Litigation Management Plan	H.17	A	D	CO	60 days after contract award with updates as required
1.9	Collective Bargaining Agreement	H.11	I	D	CO	60 days after ratification
1.10	GFS/I needs Projection	C.4(a)&(b)	I	D	CO	90 days after award with updates quarterly
<p>A = Approval—The deliverable shall be provided to the CO for review and approval. DOE will review the deliverable and provide comments in writing. Comments will be discussed and the Contractor is required to provide written responses if they wish to take exception. Documents shall be re-written to incorporate all DOE mandatory comments. Once a deliverable or document has been approved by the CO, it shall be placed under configuration control and no changes to that document shall be made, without CO approval.</p> <p>CO = Contracting Officer.</p> <p>FR = Facility Representative, approval is in accordance with DOE Directives</p> <p>D = U.S. Department of Energy, Richland Operations Office.</p> <p>I = Information—The deliverable shall be provided for information purposes only. DOE will have the option of reviewing the information and providing comments. Such comments do not require resolution under the Contract.</p>						

- (g) Authorization Basis (AB) Documents: DOE shall review and approve AB documents submitted by the contractor as required by the terms and conditions of the contract. DOE and the contractor shall use a collaborative process in ensuring AB documents are developed in a quality manner meeting applicable laws and DOE directives and are reviewed and approved in a timely and efficient process. This includes the use of in-process reviews of AB documents including AB documentation planning, hazard analysis

review, accident analysis review, and final review. DOE will review and either approve (with or without comments) or disapprove (with comments and basis) AB documents as follows:

- (1) Document Safety analysis (DSA)/Technical Safety /Requirement (TSR) - 16 weeks
 - (2) Preliminary DSA - 16 weeks
 - (4) Minor Safety Basis change - 8 weeks
 - (5) Major Safety Basis change - 12 weeks
 - (6) Annual update to DSA - 8 weeks
 - (7) Unreviewed Safety question/Justification for Continued Operations - 6 weeks
 - (8) Health and Safety Plan - 10 weeks
 - (9) Safety Analysis reports for Packaging (onsite) - 12 weeks
- (h) Integrated Safety Management System: DOE shall complete the review of the submittal within 90 calendar days of receipt. The approval and verification of the acceptability of the ISMS description shall be performed by DOE in accordance with DOE-HDBK-3027-99, Integrated Safety Management Systems (ISMS) Verification, Team Leader's Handbook.
- (i) Draft Regulatory Decision Documents and Reports: DOE will review regulatory decision documents and reports and provide comments or concurrence within 30 calendar days. Concurrence means the document is ready for submittal to the EPA/Ecology for review and approval in accordance with the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement). The DOE will reduce review times based on the use of a collaborative process in developing the document between the contractor, DOE and the regulator.

F.6 TRANSITION PLAN

The Contractor will submit a Transition Plan detailing all actions needed to accomplish a smooth transition of responsibility for the work under this contract from the predecessor contractors. The transition period shall be no longer than 60 days, the first day of which will be the date of contract award. The Plan will include a schedule for transition period activities. The Transition Plan shall be furnished to DOE eleven days after award, and its implementation will be subject to DOE approval (Table F-1, Item 1.1).

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G.1 CORRESPONDENCE PROCEDURES

To promote timely and effective administration, correspondence submitted under this contract shall include the contract number and shall be subject to the following procedures:

- (a) **Technical Correspondence:** Technical correspondence shall be addressed to the DOE Contracting Officer's Representative (COR) with an information copy addressed to the DOE Contracting Officer (used herein excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions of this contract).
- (b) **Other Correspondence:** All other correspondence shall be addressed to the DOE Contracting Officer with information copies of the correspondence to the COR and the DOE Patent Counsel (where patent or technical data issues are involved).

G.2 CONTRACT ADMINISTRATION

The DOE Contracting Officer and correspondence address is:

Andrew H. Wirkkala, Contracting Officer
U.S. Department of Energy
Richland Operations Office
Office of Procurement Services, MSIN A7-80
P.O. Box 550
Richland, WA 99352

The contractor will be notified in writing of the name and correspondence address of the Contracting Officer's Representative (COR) who is the only individual (outside of the Contracting Officer) that may give technical direction. There shall be only one individual designated as a COR under this contract.

G.3 BILLING INSTRUCTIONS

- (a) **Cost Invoices.** The DOE will make payments to the contractor by electronic fund transfer. The contractor may submit cost invoices, with supporting documentation, no more frequently than once a week. Cost invoices submitted shall be in accordance with Section I, FAR 52.216-7, "Allowable Cost and Payment." The contractor is required to submit Cost Performance Reports (CPR) on a monthly basis reconciled to the invoices submitted for payment.
 - (1) Costs claimed shall be only those recorded costs authorized for billing by the payment provisions of the contract.
 - (2) Indirect costs claimed shall reflect actual experience, but in no event shall exceed those approved for billing purposes by the contracting officer.

- (3) Contractor shall maintain original support for all claimed costs including all claimed subcontractor costs.
 - (4) The total fee billed, retainage amount, if any, and available fee must be shown.
 - (5) A Cost Certification must be signed by a responsible official of the Contractor.
 - (6) Additional supporting data for claimed costs shall be provided in such form and reasonable detail as an authorized representative of the Contracting Officer may require.
- (b) Fee Invoices. The contractor may submit invoices for fee payments quarterly. Upon receipt of an acceptable invoice for fee payment, the CO will assess the need for adjustments. Unless the CO elects to do otherwise, and as set forth below and elsewhere in this contract, fee payments will be made quarterly, within seven business days after the contractor submits an acceptable invoice. If the contractor proposes as a part of a consortium, joint venture, and/or other teaming arrangement, the team shall share in the contract fee structure (i.e., separate additional “subcontractor fee” for teaming partners will not be considered an allowable cost under this contract).
- (c) Invoices: Invoices shall be submitted in triplicate (original and two copies), in accordance with the following:
- (1) Original and copies of invoices shall be submitted simultaneously. Invoices not simultaneously received by all addressees may be rejected or have payment delayed.
 - (2) The copy provided to the COR may be submitted electronically. In addition, the Contractor shall provide a weekly schedule (or as directed by DOE) of cost detail electronically. The invoice shall not be considered “received” by the government until the fully-edited electronic cost detail file is electronically transmitted to the Department’s financial system.
 - (3) In addition to the information required by the Section I Clause, *Prompt Payment* (FAR 52.232-25), the following information must be included on each invoice:
 - (i) Budget and Reporting (B&R) Breakout (if required)
 - (ii) Cost Center Code
 - (iii) The performance period covered by the billing,
 - (iv) Target Cost
 - (v) Target Fee
 - (vi) Total Estimated Cost

- (vii) Total Contract Obligations
 - (viii) Total Labor Costs
 - (ix) Other Direct Costs
 - (x) Overhead base(s) and calculation(s)
 - (xi) Current Period Costs and Fee
 - (xii) Cumulative Costs and Fee by Fiscal Year
 - (xiii) Balance Against Cumulative Obligations
 - (xiv) Balance Against Total Estimated Cost and Fee
- (4) Original invoice shall be submitted to the paying office at either the postal address or express courier address, as follows:

PAYING OFFICE - POSTAL ADDRESS:

U.S. Department of Energy
Oak Ridge Financial Service Center
P.O. Box 4307
Oak Ridge, TN 37831

PAYING OFFICE - EXPRESS COURIER ADDRESS:

U.S. Department of Energy
Oak Ridge Financial Service Center
200 Administration Road
Oak Ridge, TN 37830
(Phone No. 423-241-5073)

- (5) One copy of each invoice submitted to the COR and CO at the addresses in G.2, as appropriate:

G.4 MODIFICATION AUTHORITY

As stated above and notwithstanding any of the other provisions of this contract, a Contracting Officer shall be the only individual on behalf of the Government authorized to:

- (a) Accept non-conforming work,
- (b) Waive any requirement of this contract, or
- (c) Modify any term or condition of this contract.

Part I - The Schedule
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H.1 ENVIRONMENT, SAFETY, HEALTH, AND QUALITY ASSURANCE (ESH&Q)

- (a) The FFTF Project and this contract have a mission of accelerated closure. The nature of this contract along with the financial incentives for accelerated completion or for cost effectiveness should never compromise or impede implementation of the Integrated Safety Management (ISM) System and ESH&Q compliance. The contractor shall establish a single project wide ISM system, in compliance with the Section I clause, *Integration of Environment, Safety and Health into Work Planning and Execution*, and Section B clause *Conditional Payment of Fee, Profit or Incentives*. The contractor shall submit to the CO for approval the integrated safety management system description per the above clauses 90 days after contract award. Until DOE approves this system, the contractor must use the incumbent contractor's Integrated Safety Management system descriptions. Consistent with the ISMS clause, the contractor will be provided guidance on the preparation, review, and approval of the contractor's ISMS within 15 days following contract award.
- (b) The contractor shall:
 - (1) Establish a structured approach to planning and control of work including identification, management and implementation of ESH&Q standards and requirements appropriate for the work to be performed and for controlling related hazards, while facilitating the effective and efficient delivery of work. The contractor shall implement the requirements identified in the Section I clause entitled, *Laws, Regulations and DOE Directives*. The contractor is encouraged to follow DEAR clause 970.5204-2(c) to tailor the requirements to the work.
 - (2) Implement a program to track and address environmental compliance issues and implement requirements (including but not limited to permitting, environmental reporting, Consent Decrees, Tri-Party Agreement reporting/management, pollution prevention, waste minimization).
 - (3) Establish annual integrated environment, safety and health performance objectives, measures, and commitments.
 - (4) Submit a Quality Assurance Program plan in accordance with CRD O 414.1A and 10 CFR 830.120 to DOE for approval prior to beginning work. The contractor may accept and implement existing QAP(s).

H.2 STOP-WORK AND SHUTDOWN AUTHORIZATION

- (a) Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/ hazardous chemicals. Imminent Danger in relation to the Facility Safety Envelope is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) Nuclear Criticality, (2) Radiation Exposure, (3) Fire/Explosion, and/or (4) Toxic Hazardous Chemical Exposure.

- (b) **Stop Work:** In the event of an imminent health and safety hazard, identified by facility line management or staff or facility health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/ implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public and to protect DOE facilities and the environment. In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate official, who will direct the shutdown or other actions, as required. Such mitigating action should subsequently be coordinated with the RL and management. The suspension or stop work order should be promptly confirmed in writing from the Contracting Officer.
- (c) **Shutdown:** In the event of an imminent danger in relation to the Facility Safety Envelope or a non-imminent health and safety hazard identified by facility line managers, facility operators, health and safety personnel over-viewing facility operations, or by independent oversight organizations, the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with management, and the DOE-RL Manager. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to clause F.4.
- (d) **Facility Representatives:** DOE personnel designated as Facility Representatives (FR) provide the technical oversight of operations. The FR has the authority to “stop work,” which applies to the shutdown of an entire plant, activity, or job. This stop work authority will be used for an operation of a facility which is performing work the FR believes:
 - (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;
 - (2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or
 - (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.

H.3 OCCUPATIONAL HEALTH RECORDS AND RADIATION EXPOSURE RECORDS

All occupational health records generated during the performance of Hanford-related activities will be maintained by the Hanford Occupational Medicine Contractor and are the property of DOE. All radiation exposure records generated during the performance of Hanford-related activities will be maintained by the Pacific Northwest National Laboratory (PNNL) and are the property of DOE.

H.4 SAFEGUARDS & SECURITY

The contractor will be custodian for accountable quantities of category IV nuclear material. The contractor shall:

- (a) Ensure appropriate levels of protection against unauthorized access; theft, diversion, loss of custody of accountable Nuclear Material (NM) or Special Nuclear Material (SNM); theft of Government property; and other hostile acts that may cause unacceptable adverse impacts on national security or the health and safety of DOE or contractor employees, the public, or the environment.
- (b) Develop and implement a graded material control and accountability (MC&A) program for any accountable SNM or NM in accordance with DOE Orders and Manuals. The contractor may subcontract aspects of the MC&A program (e.g., nuclear material accounting and reporting, custodian, training, etc.). The contractor's MC&A Program is subject to DOE-RL approval.
- (c) Provide for the protection of any classified and unclassified sensitive information generated, processed, and stored within its facilities or administrative control, at any subcontracting tier. Information Security (IS) and Operation Security (OPSEC) procedures shall be developed to ensure compliance with DOE directives.
- (d) Interface with the Site Management Contractor and its subcontractors who provide physical security services (e.g., site access control, security police officers, vulnerability analysis, etc.) and develop documented mutually agreed to roles and responsibilities.
- (e) Promptly prepare and submit for security clearances as required for work under this contract.

H.5 PUBLIC RELATIONS, MEDIA SUPPORT AND STAKEHOLDER INTERACTION

- (a) The contractor shall participate in the DOE-RL external/internal communications program to ensure that the full range of stakeholders receives information in a timely, accurate, complete, and professional manner. Contractor external communications actions shall comply with the DOE Openness Initiatives and Public Involvement Policy and the American Indian and Alaska Native Tribal Government Policy.
- (b) The contractor shall work with DOE to ensure external/internal communications activities represent a singular and consistent DOE source of information about the Project and its relationship to the Hanford Site.
- (c) The contractor shall keep the FFTF Closure Project workforce informed in a timely manner of all significant issues that may affect those workers.
- (d) As requested, the contractor shall:

- (1) Provide timely and consistent support for inter-Governmental liaison activities, including activities with Federal, State, local and Native American Governments, and the Hanford Advisory Board and public meetings as it pertains to the project.
 - (2) Respond in a timely fashion with information as requested by DOE in support of *Freedom of Information Act* and/or *Privacy Act* requests.
- (e) The contractor's external/internal communications activities include, but are not limited to:
- (1) Public Information
 - (2) Public Involvement
 - (3) Emergency Communications Activities
 - (4) Media Relations
 - (5) FFTF Tours as requested by RL
 - (6) Preparation/Maintenance of public information Audio/Video Products and Printed Materials.

H.6 HANFORD SITE INFRASTRUCTURE, UTILITIES, DATA SYSTEMS, AND STEWARDSHIP

- (a) Hanford Site infrastructure and services provide for the common needs of Hanford Site operations. Most infrastructure/services are provided through designated Hanford prime contracts. Some services are directly funded without cost to the contractor while most are paid for either through allocating costs among the site's contractors or use based. The contractor is responsible to provide usage forecasts to the provider (e.g. electrical load). The following describes the categories of services and the terms under which services are provided. Detail information for each service can be obtained from the provider. Services that were required in conjunction with execution of the FFTF Closure Project during FY 2003 are estimated at \$5,170,000. Direct Funded Services costs are not included in this estimate amount.

Direct Funded Services

DOE provides for the services listed in Table H-6.1 to enable critical site infrastructure and maintain services continuity without cost to this contract.

Centralized Site Services

Centralized services listed in Table H-6.2 are operated to the benefit of all site contractors to address Hanford wide needs and/or obtain the benefits of volume-based operations. Costs of operating each service are either allocated or based on usage. The contractor will be expected to provide reasonable personnel support for site wide emergency

response in conjunction with the contractor's facilities and operations. In addition, for Site wide emergency responses not directly involving the FFTF, the contractor will be expected to provide reasonable staff support for positions within the Site's Emergency Response Organization to help ensure adequate staffing to respond to any emergency on the Site.

Direct Billed Services

Direct Billed services listed in Table H-6.3 are charged based on usage.

Other Site Services

Other services are available incidental to work being performed by other Hanford site contractors and may be obtained at the discretion of the Contractor. A summary listing is provided in Table H-6.4; however, the availability of these services may change without notice. DOE does not warranty any of these services.

Services are obtained by entering into agreements with the provider contractor through an Interface Control Document, a Service Level Agreement, or equivalent which generally defines the type and level of service and agreed projected usage. Significant change by the contractor in the use of any service requires a minimum 90 day notice to the providing contractor as well as the Contracting Officer.

Electrical distribution at FFTF is the responsibility of the FFTF Closure Project Contractor. The boundary and point of interface with BPA and the remaining Hanford Site are at Substation 451A. The Contractor is also responsible for operating and maintaining the water supply system and sewer system within the FFTF boundaries which serve the FFTF until they are no longer needed. Operations of the sanitary sewer system must comply with the terms of DOE's lease (Contract No. AT(45-1)-2269) to the Washington Public Power Supply System (Energy Northwest). The conditions of service termination should allow reuse of the balance of these systems.

Table H-6.1 Direct Funded Site Services

Direct Funded Items	Provider
Badging	FHI
Biological Control	FHI
Hanford Environmental Information Databases	FHI
Hanford Patrol	Protec
Mapping Services	FHI
Radiological Assistance Program	FHI
Safeguards and Security Vulnerability Analysis	FHI
Steam	Johnson Controls

Traffic Engineering	FHI
Traffic Manager	FHI
Tri-Party Agreement/Site Administrative Record/Public Information Repositories	LMSI
Utilities - Water Compliance and Sampling	FHI

Table H-6.2 Centralized Site Services

Service	Provider
Centralized Consolidated Recycling Center (CCRC)	FHI
Sitewide Emergency Preparedness	FHI
Engineering Drawing Management	LMSI
Fire Department	FHI
Hanford Employee Trust Benefits/Human Resources	FHI
Industrial Hygiene Laboratory	FHI
Information Resource Management (HISI/PeopleCore/HID/PopFon)	FHI
Mail and Courier Services	FHI
Property System Management - SAMS & Integrated Reporting	FHI
Radio Services - Infrastructure	FHI
Records Management	LMSI
Roads and Grounds Services	LMSI
Sanitary Waste Disposal	FHI
Service Assessment Pool	FHI

Table H-6.3 Direct Billed Site Services

Direct Billed Services	Provider
Desktop services	LMSI
Dosimetry - Records portion	PNNL
Electrical - BPA	BPA
HLAN Ops, Maintenance and Integration	LMSI
Laundry	UNITEC
Occupational Medicine Services	HEHF
Telecommunication Service	LMSI

Table H-6.4 Other Site Services

Service	Provider
Asset Disposition (Inventory Recovery Operations)	FHI
Calibration Services	FHI
Classified Document Management	FHI
Crane and Rigging	FHI
Dosimetry—External	FHI
Fabrication Services	FHI
Fire Systems Maintenance	FHI
Fleet Maintenance—General Services Administration (GSA) Vehicles	FHI
Forms Management	FHI
Industrial Hygiene Lab	FHI
Locksmith Services—General	FHI
Micrographics	FHI
Occupancy Pools—Government Owned/Leased Facilities	FHI
Paging Services—Non Infrastructure	FHI
Radio Services—Non Infrastructure	FHI
Refrigerated Equipment Services	FHI
Respiratory Protection	FHI
Safeguards and Security—all except the centralized portion	FHI
Vent and Balance	FHI

(b) Data systems available for FFTF Closure Project Contractor:

- Chemical Management Database: Site wide database that keeps track of all hazardous chemicals, their locations and quantities.
- EDMS (Engineering Data Management System): Contains configuration management information about drawings and engineering documents (e.g., release date and revision status).
- HANDI: Site wide financial reporting software.
- HDTS (Hanford Document Tracking System): Provide searches for document metadata not found in one of Hanford’s “core” document systems such as Records Management Information System (RMIS). This system is considered a legacy system that no longer receives data input or updates.
- JCS (Job Control System): Automated job control system used for controlling/releasing work and providing a comprehensive component database.

- Maestro: Estimate the cost of the activities that make up the P3 schedule.
- MicroShield: Calculates the activity of a radioactive package based on the dose rate, or to determine the amount of shielding needed to achieve a desired dose rate based on a given radiation source.
- Microsoft Project: Scheduling software used for planning and execution of the daily work.
- PERF/SMRF or Performance Module: A software package that manipulates data from P3, for budget performance or baseline costs, into the proper format so that it may be loaded into HANDI.
- Primavera (P3): Scheduling software used for budgetary and life cycle planning as well as tracking monthly progress.
- RadCalc: Calculates the type of radioactive shipment that is required for a specific package (Limited Quantity, LSA, Type A, etc.).
- RICS (Refueling Inventory Control System): Provides strict accountability of fueled and non-fueled reactor components and other refueling support equipment as they are handled throughout the Reactor Refueling System.
- RMIS (Records Management Information System): Site wide records management and archiving system.
- SWITS (Solid Waste Information and Tracking System): Site wide database that keeps track of the disposition of waste and the drums used on site.
- Symphony Decay Heat Program: Used to conduct decay heat surveillance required by the FFTF Technical Specifications.

(c) Monitoring

- (1) Via contract, DOE monitors the Hanford environment to protect the public safety and the Hanford Site ecological and cultural resources. This includes providing real time localized weather information for routine safety operations and emergency response, performing Hanford Site and off-site environmental monitoring, as well as determining radiological exposure to the public and the environment. The contractor shall provide the required environmental data for the facilities and operable units for which it is responsible in order to support Hanford Site assessments and preparation of the Hanford Site Environmental Report.
- (2) DOE's groundwater monitoring contractor is also responsible for the Hanford Site groundwater monitoring. The contractor will be knowledgeable of the actions completed in order to develop monitoring plans for the facilities and operable units for which the contractor has responsibility.

(d) Property Disposition

Facilities and equipment under the responsibility of the contractor (see Section J, Appendix 4) are determined to be excess and devalued to zero. The facility and any associated property may be determined as waste. The contractor shall submit to DOE for approval a plan in compliance with the Site Management Contractor's Property disposition process to address the disposition of this property.

(e) Stewardship

- (1) The contractor shall follow the Hanford Cultural Resources Management Plan, DOE/RL-98-10, Rev. 2, in protecting subsurface cultural deposits uncovered during the course of the work specified in this contract.
- (2) The contractor shall support RL in fulfilling its responsibilities under Executive Order 12580 and Subpart G of the National Contingency Plan (40 CFR Part 300) as a trustee for natural resources. This support shall include coordinating with the Hanford Natural Resource Trustee Council (NRTC).

H.7 INCUMBENT EMPLOYEES HIRING PREFERENCES

The Contractor shall use the transition period to make hiring decisions and to establish the management structures necessary to conduct an employee relations program. In establishing the initial work force, and through the first six months after contract award, the Contractor shall give a first preference in hiring for vacancies in non-managerial positions in non-construction activities under this contract to qualified employees employed by the incumbent contractor at contract award. This hiring preference takes priority over the hiring preference provided in Clause I.99, Displaced Employee Hiring Preference. It does not apply to the contractor's hiring of management staff (i.e., first line supervisors and above).

H.8 PAY AND BENEFITS

(a) Pay

For employees employed by the incumbent contractor at contract transition who are offered and accept employment within six months of contract award, the contractor shall pay employees base salary/pay rates that are at least equivalent to the base salary/pay rates they are being paid at the time the contractor offers employment, if the position for which the employee is hired entails duties and responsibilities that are substantially equivalent to their prior positions with the incumbent contractor.

If the base salary/pay rate that an employee is being paid by an incumbent contractor at the time the contractor offers them employment falls above the new maximum base salary/pay rate for their position, the following will apply:

- The employee shall continue to receive the same salary/pay rate paid by the incumbent contractor.

- The employee shall receive no base salary/pay adjustments until such time as the contractor's pay rate range is increased to exceed the employees base salary/pay rates.
- After the contractor's rate range is increased to exceed their base salary/pay rates, the employee shall be eligible for increases consistent with the contractor's base salary/pay rates.

If the base salary/pay rates of incumbent employees at the time the contractor offers them employment fall below the minimum rate of the new base salary/pay rates in such circumstances, the incumbent employee shall have their salary/pay rate increased to reflect the new base rates.

(b) Pensions And Other Benefits

(1) Incumbent Employees Vested In The Hanford Site Pension Plan

PENSION BENEFITS

Incumbent employees, who are vested in the Hanford Site Pension Plan, at the time of contract transition, shall be eligible and allowed to continue participating in the Hanford Site Pension Plan for employment during the first five years of this contract. Vested employees shall retain credit for their prior Hanford service without the contract transition constituting a break in service. The contractor shall become a sponsor of the Hanford Site Pension Plan currently sponsored by the incumbent contractor. The contractor shall timely supply the Plan Administrator of the Hanford Site Pension Plan with all the information which the Administrator determines to be necessary to administer the plan effectively. Contributions to the Hanford Site Pension Plan as determined by the Plan Administrator shall be allowable costs under this contract. At contract completion, the contractor shall fully fund its withdrawal liability under the Hanford Site Pension Plan.

The contractor shall coordinate with the Hanford Site Pension Plan administrator to ensure the Department receives an annual reporting and accounting of the contractor's pension obligations, pursuant to Financial Accounting Standard (FAS) 87, for those employees participating in the Hanford Site Pension Plan under this contract. The Contractor shall coordinate with the Hanford Site Plan Administrator and supply the Administrator with all the information necessary to maintain the federal tax qualification of all Contractor and Hanford Site pension plans.

At the end of five years, the Contractor shall allow employees to participate in the Contractor pension system required in Paragraph (2) below.

OTHER BENEFITS

The Contractor shall become a sponsor of the Hanford Employee Welfare Trust (HEWT) Plan. Employees vested in the Hanford Site Pension at the time of transition shall be eligible to continue participation in the HEWT Plan and receive medical and other benefits under the HEWT Plan consistent with the terms of that

Plan, as amended from time to time. The contractor shall credit the length of service of employees who are currently employed by the incumbent contractor and vested in the Hanford Site Pension Plan at the time of transition who are hired for work under this contract toward the service period required for benefits relating to vacations, sick leave, health insurance, severance, layoff, recall and other benefits.

The contractor will timely supply the Plan Administrator of the HEWT Plan with all the information required by the Administrator necessary to administer the plan effectively. Contributions into the HEWT Plan as determined by the Administrator will qualify as allowable costs under this contract.

The contractor will coordinate with the HEWT administrator to ensure the Department receives an annual reporting and accounting of the contractor's benefit obligations for those employees participating in the HEWT under this contract.

For any vested employee electing not to participate in the HEWT Plan, the contractor shall allow the employee to participate in the plan offered to the incumbent employees not vested in the Hanford Site Pension Plan at the time of transition.

(2) Incumbent Employees Not Vested In The Hanford Site Pension Plan

PENSION & BENEFITS

The contractor shall offer a market-based retirement and medical benefit package competitive for the industry for incumbent employees not vested in the Hanford Site Pension Plan. If the Contractor meets all applicable legal and tax requirements, the Contractor may establish a separate line of business pursuant to Internal Revenue Code (IRC) §410 and §414 for the purpose of maintaining the federal tax qualification of pension plans covering the contractor's employees.

Contractors shall develop and implement welfare benefit programs that meet the tests of allowability and reasonableness established by Federal Acquisition Regulations 31.205-6.

(3) Post-Contract Responsibilities For Pension And Benefit Plans

NO REPLACEMENT CONTRACTOR

If this contract expires or terminates without a replacement contractor, the Contractor shall:

- Continue as a plan sponsor of the existing pension plan and any welfare benefit plans covering those vested employees (identified during the transition period) as directed by DOE, at DOE's sole discretion, on a funding basis acceptable to DOE.

- Pension plan contribution and plan asset management costs will continue to be allowable under this contract unless other arrangements have been approved by the Contracting Officer.
- DOE and the Contractor shall meet to determine the ultimate disposition of all pension, post-retirement welfare, and post-employment plans.
- During the final 18 months of this contract, the Contracting Officer shall provide written direction to the contractor regarding all post-contract pension and welfare benefit plans.

H.9 LABOR RELATIONS

The contractor will respect the right of employees to self-organization and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities. The contractor shall develop and implement labor relations policies that will promote orderly collective bargaining relationships, equitable resolution of disputes, efficiency and economy in operations, and the judicious expenditure of public funds.

Consistent with applicable labor law and regulations, the Contractor shall recognize and bargain in good faith with the collective bargaining representative of employees performing work that has historically and traditionally been performed by Hanford Atomic Metal Trades Council (HAMTC) members. The contractor shall provide the Contracting Officer with a copy of the collective bargaining agreement within 30 to 60 days after formal ratification.

The contractor shall consult with the Contracting Officer prior to and during the course of negotiations with labor unions, and during the term of resultant contracts, on economic issues and other matters that have a potentially significant impact on work rules, make-or-buy decisions, or other matters that may cause a significant deviation from past customs or practices.

The contractor shall promptly advise the Contracting Officer of, and provide all appropriate documentation regarding any labor relations developments at the prime or subcontract level that involve or appear likely to involve:

- Possible strike situations affecting the facility;
- Referral to the Energy Labor-Management Relations Panel;
- The National Labor Relations Board at any level;
- Recourse to procedures under the Labor-Management Act of 1947 as amended, or any other Federal or state labor law;
- Any grievance that may reasonably be assumed to be arbitrated under a Collective Bargaining Agreement.

“Labor organization,” as used in this clause, shall have the same meaning it has in 42 U.S.C. 2000e(d).

- (a) Unless acting in the capacity of a constructor on a particular project, the Contractor shall not –
 - (1) Require bidders, offerors, contractors, or subcontractors to enter into or adhere to nor prohibit those parties from entering into or adhering to agreements with one or more labor organizations, *i.e.*, project labor agreements, that apply to construction project(s) relating to this contract; or
 - (2) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for refusing to become or to remain signatories or to otherwise adhere to project labor agreements for construction project(s) relating to this contract.
- (b) When the contractor is acting in the capacity of a constructor, *i.e.*, performing a substantial portion of the construction with its own forces, it may use its discretion to require bidders, offerors, contractors, or subcontractors to enter into a project labor agreement that the contractor has negotiated for that individual project.
- (c) Nothing in this clause shall limit the right of bidders, offerors, contractors, or subcontractors to voluntarily enter into project labor agreements.

A copy of the Hanford Site Stabilization Agreement is located at
http://www.hanford.gov/procure/solicit/rcc/pdf/Exhibit_H.pdf.

H.10 WORKFORCE RESTRUCTURING

When the Contractor determines that a reduction of force is necessary, the Contractor shall notify the Contracting Officer and seek approval, if required under applicable Departmental guidance. The Contractor shall provide such information as directed by the Contracting Officer to enable compliance with section 3161 of the National Defense Authorization Act for Fiscal Year 1993 and any other Departmental guidance pertaining to employees who may be eligible for provisions of the Act. The Contractor shall comply with the Hanford Site Workforce Restructuring Plan (as amended from time to time) and shall supply workforce restructuring related information and reports as needed by the Department. The Contractor shall extend displaced employee hiring preference in accordance with Clause I. 99, Displaced Employee Hiring Preference.

H.11 AGE DISCRIMINATION

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act, with any state or local legislation regarding discrimination based on age, and with all applicable regulations thereunder.

H.12 WORKERS' COMPENSATION

- (a) Pursuant to State of Washington Revised Code (RCW) Title 51, the Department of Energy (DOE), Richland Operations Office (RL) is a group self-insurer for purposes of workers' compensation coverage. The coverage afforded by the workers' compensation statutes shall, for performance of work under this contract at the Hanford Site, be subject to the following:
- (1) Under the terms of a Memorandum of Understanding with the Washington Department of Labor and Industries (L&I), DOE has agreed to perform all functions required by self-insurers in the State of Washington. The contractor is not required to pay for Workers' Compensation coverage or benefits except as otherwise provided below or as directed by the Contracting Officer.
 - (2) The contractor shall submit to DOE (or other party as designated by DOE), for transmittal to the L & I, such payroll records as are required by Workers' Compensation laws of the State of Washington.
 - (3) The contractor shall submit to DOE (or other party as designated by DOE), for transmittal to the Department, the accident reports provided for by RCW Title 51, Section 51.28.010, or any other documentation requested by DOE or the L&I pursuant to the Workers' Compensation laws of the State of Washington.
 - (4) The contractor shall take such action, and only such action, as DOE requests in connection with any accident reports, including assistance in the investigation and disposition of any claim thereunder and, subject to the direction and control of DOE, the conduct of litigation in the contractor's own name in connection therewith.
 - (5) Under RCW Title 51.32.073, DOE is the self-insurer and is responsible for making quarterly payments to the L&I. In support of this arrangement, the contractor is responsible for withholding appropriate employee contributions and forwarding on a timely basis these contributions plus the employer-matching amount to DOE.
 - (6) The workers' compensation program shall operate in partnership with contractor employee benefits, risk management, and environmental, safety, and health management programs. The contractor shall cooperate with DOE for the management and administration of DOE, Richland Operations Office (RL) self-insurance program that provides workers' compensation benefit coverage to contractor employees under this contract.
 - (7) The contractor must certify to the accuracy of the payroll record used by the Department in establishing the self-insurance claims reserves, and cooperate with any state audit.
 - (8) The contractor shall submit to the Contracting Officer, a yearly evaluation and analysis of workers' compensation cost as a percent of payroll compared with the

percentage of payroll cost reported by a nationally recognized Cost of Risk Survey that has been pre-approved by the Department (once DOE has provided the contractor with the necessary data to perform the analysis required in this paragraph).

- (9) The contractor will provide statutory worker's compensation coverage for staff members performing work under this contract outside of the State of Washington and not otherwise covered by the State of Washington worker's compensation laws.
- (10) Subcontractor's performing work under this contract on behalf of the contractor are not covered by the provision of the Agreement referenced in (a)(1) of this clause. The contractor shall flow-down to its subcontractors the requirement to provide statutory worker's compensation coverage for the subcontractor's employees. The contractor shall have no responsibility for subcontractor worker's compensation when it includes this requirement in the subcontract.

H.13 ADMINISTRATION OF SUBCONTRACTS

- (a) The administration of all subcontracts entered into and/or managed by the contractor, including responsibility for payment hereunder, shall remain with the contractor unless assigned at the direction of DOE.
- (b) The Government reserves the right to direct the contractor to assign to the Government or another any subcontract awarded under this Contract.
- (c) The contractor agrees to accept transfer of existing subcontracts as determined necessary by DOE for continuity of operations. The contractor shall attempt to negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the contractor will notify the Contracting Officer in writing.

H.14 LITIGATION MANAGEMENT

- (a) The contractor shall maintain or have access to a legal function and demonstrate sound litigation management practices to include litigation, arbitration, legal advice on environmental matters, procurement, employment, labor, and the Price-Anderson Act (PAA); review and interpretation of legislation and laws; and research and drafting of memorandum. Within 60 days of contract award, the contractor shall provide a legal management plan compliant with 10 CFR 719.
- (b) The contractor shall provide support to the Government when judged necessary by the Contracting Officer in cases of actual or threatened litigation, regulatory matters, or third-party claims and subject to applicable rules and regulations. Litigation support includes, but is not limited to: case preparation assistance, document retrieval, review and reproduction; witness preparation and testimony; expert witness testimony; and assisting Government counsel as necessary in response to discovery or other information related activities responsive to any legal proceeding.

H.15 DISPOSITION OF INTELLECTUAL PROPERTY - FAILURE TO COMPLETE CONTRACT PERFORMANCE

The following provisions shall apply in the event the contractor does not complete contract performance for any reason:

- (a) Regarding technical data and other intellectual property, DOE may take possession of all technical data, including limited rights data and data obtained from subcontractors, licensors, and licensees, necessary to complete the project, as well as the designs, operation manuals, flowcharts, software, information, etc., necessary for performance of the work, in conformance with the purpose of this contract. Proprietary data will be protected in accordance with the limited rights data provisions of the Rights in Data clause of Section I.
- (b) The contractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice by the contractor, and any other intellectual property, including technical data, which are owned or controlled by the contractor, at any time through completion of this contract and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the facilities or which cover articles, materials or products manufactured at a facility, (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at anytime from contesting the enforceability, validity or scope of, or title to, any rights or patents or other intellectual property herein licensed.
- (c) In addition, the contractor will take all necessary steps to assign permits, authorizations, leases, and any licenses in any third party intellectual property for operations, remediation and closure of the facilities to DOE or such other third party as DOE may designate.

H.16 DETERMINATION OF APPROPRIATE LABOR STANDARDS

DOE shall determine the appropriate Labor Standards in accordance with the Davis-Bacon Act, the Service Contract Act, or any other applicable labor laws which shall apply to work performed under this contract. Where requested by DOE, the contractor shall provide whatever information is relevant to labor standards determinations, in the form and timeframe required by DOE, as may be necessary by DOE to make such labor standards determinations. Once a determination is made, the contractor is responsible for compliance with the determination and incorporating applicable labor standard requirements into subcontracts. Any wage determinations under the Service Contract Act applicable to employees of the contractor will be added to the contract prior to the performance of the covered work, consistent with the provision of the clause entitled "Service Contract Act of 1965" in Section I.

H.17 PRICE-ANDERSON AMENDMENTS ACT NON-COMPLIANCE

The contractor shall establish an internal Price Anderson Amendments Act (PAAA) noncompliance identification, tracking and corrective action system and shall provide access to and fully support DOE reviews of the system. The contractor shall also implement a PAAA reporting process which meets applicable DOE standards. The contractor shall be accountable for ensuring subcontractors adhere to the PAAA requirements.

H.18 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES

- (a) The contractor shall accept, in its own name, service of notices of violation or alleged violations (NOVs/NOAVs) issued by Federal or State regulators to the contractor resulting from the contractor's performance of work under this Contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this Contract.
- (b) The contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

H.19 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES

- (a) This clause allocates the responsibilities of DOE and the contractor, referred to collectively as the "parties" for implementing the environmental requirements at facilities within the scope of the Contract. In this clause, the term "environmental requirements" means requirements imposed by applicable Federal, State, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements including the *Hanford Federal Facility Agreement and Consent Order*, consent orders, permits, and licenses.
- (b) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this Contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.
- (c) Regardless of which party to this contract is named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, provisions of this contract related to allowable costs will govern liability for payment of any fine or penalty. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost provisions of this contract if the contractor was the named subject of the

enforcement action, the contractor will either pay the fine or penalty or reimburse DOE (if DOE pays the fine or penalty).

H.20 INVOICED AMOUNTS

In addition to the information required by other sections of this contract, the contractor shall provide incurred cost data coded in a DOE defined format via computer. This incurred cost data must be fully edited against DOE codes such as B&R codes. The contractor shall deliver the fully edited incurred cost data to DOE on the same day the payment is requested unless directed otherwise by DOE.

H.21 FEE REDUCTION FOR CHANGES IN KEY PERSONNEL

Key personnel are considered to be essential to the work being performed on this contract. Prior to diverting to other positions or substituting any of the specified Key individuals, or proposing them as a Key person under another contract, the contractor shall notify the Contracting Officer in writing reasonably in advance, not to exceed thirty (30) days in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the work being performed under this contract. No diversion or substitution shall be made by the contractor without the written consent of the Contracting Officer, provided that the Contracting Officer may ratify in writing such diversion or substitution and such ratification shall constitute the consent of the Contracting Officer required by this clause. Unless approved in writing by the Contracting Officer, no key personnel position will remain unfilled by a permanent replacement for more than 60 days. The key personnel list shall be amended during the course of the contract to add or delete key personnel as appropriate and approved by the Contracting Officer.

Anytime the overall FFTF Closure Project Manager is replaced or removed for any reason under the contractor's control within two (2) years of being placed in the position, fee will be reduced by \$500,000. In addition, each time any of the other Key Personnel proposed are replaced or removed for any reason under the contractor's control within two (2) years of being placed in the position, fee will be reduced by \$250,000 for each removed or replaced individual.

The contractor may request, in writing, that the Contracting Officer waive all or part of a reduction, if special circumstances exist. The Contracting Officer shall have sole unilateral discretion to waive or not waive all or part of a reduction.

The following is a list of key personnel for this contract:

<u>Name</u>	<u>Position</u>
Chris Leichtweis	Project Manager
Dan Glenn	D&D Operations Manager
Bill Borden	ESH&Q Manager
Greg Varacalli	Project Integration and Control Manager

H.22 ALTERNATIVE DISPUTE RESOLUTION

- (a) The U.S. Department of Energy (DOE) and the contractor both recognize that methods for fair and efficient resolution of significant disputes are essential to the successful and timely achievement of critical milestones and completion of all Contract requirements. Accordingly, the parties agree to:
- (1) Participate in a partnering workshop to be conducted by an experienced professional jointly agreed upon by the parties and,
 - (2) Jointly select a “standing neutral” within 30 days of completion of the partnering workshop. The “standing neutral” will be available to help resolve disputes as they arise. Such “standing neutral” can be an individual, a board comprised of three independent experts, or a company with specific expertise in the Contract area. If a “standing neutral” cannot be agreed upon, the DOE Office of Dispute Resolution will make a selection. The specific ADR processes and procedures, as well as the processes for selecting the “standing neutral” will be determined at the partnering workshop.
- (b) The parties agree the following provision may be invoked for significant disputes upon mutual agreement of the DOE and the contractor:
- (1) DOE and the contractor shall use their best efforts to informally resolve any dispute, claim, question, or disagreement by consulting and negotiating with each other in good faith, recognizing their mutual interests and attempting to reach a just and equitable solution satisfactory to both parties. If any agreement cannot be reached through informal negotiations within 30 days after the start of negotiations, then such disagreement shall be referred to the “standing neutral,” pursuant to the procedures jointly developed in the partnering workshop.
 - (2) The “standing neutral” will not render a decision, but will assist the parties in reaching a mutually satisfactory agreement. In the event the parties are unable after 30 days to reach such an agreement, either party may request, and the neutral will render, a non-binding advisory opinion. Such opinion shall not be admissible in evidence in any subsequent proceedings.
- (c) If one party to this contract requests the use of the process set forth in paragraphs b(1) and b(2) of this clause and the other party disagrees, the party disagreeing must express its position in writing to the other party. On any such occasion, if the party requesting the above process wishes to file a claim under the “Disputes” clause in Section I, it must do so within 30 days of receipt of the written position from the other party.

H.23 GENERAL AND ADMINISTRATIVE (G&A) INDIRECT RATE CAP

Notwithstanding any other clauses regarding indirect rates, the Contractor’s G&A indirect rates shall not exceed those listed in the table below.

Advance Understanding on Ceiling Indirect Cost Rates and Final Reimbursement for Indirect Costs for each of the Contractor's accounting periods during the term of this contract, the parties agree as follows:

- (a) The distribution base for establishment of final G&A rates is Total Cost Input including but not limited to: Direct Labor, Fringe Benefits, Other Direct Direct Costs, Subcontracts, B&O Tax, Contingency, and Escalation.
- (b) The Contractor will make no change in its established method of classifying or allocating indirect costs without the prior written approval of the Contracting Officer.
- (c) Reimbursement for indirect costs shall be at final negotiated rates, but not in excess of the following ceiling rates based on the forecasted contract budget for this entity:

Accounting Period:	2005	2006	2007	2008	2009	2010	2011
G&A Rate Ceiling	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%

- (d) The Government shall not be obligated to pay any additional amount on account of indirect costs above the ceiling rates established in the contract. This advance understanding shall not change any monetary ceiling, cost limitation, or obligation established in the contract.

The Contractor shall use the lesser of the actual DCAA audited contract fiscal year-end rate when preparing invoices or proposals during the performance of this Contract. The Contractor shall provide the Contracting Officer, on a quarterly basis, an updated forecast of indirect rates for the remainder of the project with a detailed explanation of any variances. If funding varies by more than 10% in a given fiscal year or more than \$5M over any three consecutive year periods from the prescribed funding level, the Contractor reserves the right to re-negotiate the G&A rate caps for the affected fiscal years.

H.24 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2003)

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.25 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS-SENSE OF CONGRESS

It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-Made.

H.26 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

Documents originated by the contractor or furnished by the DOE to the contractor in connection with this contract may contain Unclassified Controlled Nuclear Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE Regulations and Directives.

H.27 PERMITS, APPLICATIONS, AND LICENSES

- (a) Except as directed by the CO, the contractor shall, on behalf of the DOE, procure and execute all necessary permits or licenses. The contractor shall abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed. The contractor shall accept assignment of permits currently held by DOE and its existing operating contractor.
- (b) The contractor shall sign environmental permits and applications as “operator” if deemed appropriate by DOE. The contractor shall submit all reports required by permits directly to DOE to forward to the regulatory agencies unless otherwise directed by the CO.

H.28 CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR

The Representations, Certifications, and Other Statements of the offeror submitted with the offer for this contract are, by reference, hereby incorporated in and made a part of this contract.

Part II - Contract Clauses

Section I

Contract Clauses

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I.1 FAR 52.202-1 DEFINITIONS (DEC 2001)

- (a) "Head of Agency means" (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iv) the Chairman, Federal Energy Regulatory Commission.
- (b) "Commercial component" means any component that is a commercial item.
- (c) "Commercial item" means-
 - (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that-
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for-
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
 - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
 - (5) Installation services, maintenance services, repair services, training services, and other services if-
 - (i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services-

(i) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in paragraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) "Component" means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

(e) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(f) "Nondevelopmental item" means-

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use.

(h) The term DOE means the Department of Energy, FERC means Federal Energy Regulatory Commission, and NNSA means the National Nuclear Security Administration.

- (i) The term Senior Procurement Executive means, for DOE:
- (1) Department of Energy – Director, Office of Procurement and Assistance Management
 - (2) National Nuclear Security Administration – Administrator for Nuclear Security, NNSA; and
 - (3) Federal Energy Regulatory Commission – Chairman, FERC.

I.2 FAR 52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (*e.g.*, an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I.3 FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

I.4 FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

I.5 FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

(a) *Definitions.*

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract..

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from--

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

I.6 FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

I.7 FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

I.8 FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibitions.* (1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) *Agency and legislative liaison by own employees.* (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) *Professional and technical services.* (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal,

amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) *Disclosure.* (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated

funds (to *include* profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) *Agreement.* The Contractor agrees not to make any payment prohibited by this clause.

(e) *Penalties.* (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

I.9 FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

(a) *Definitions.* As used in this clause--

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as--

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

"Printed or copied double-sided" means printing or reproducing a document so that information is on both sides of a sheet of paper.

"Recovered material," for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as--

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used

only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

I.10 FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

I.11 FAR 52.215-2 AUDIT AND RECORDS—NEGOTIATION (JUN 1999)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in

performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) *Comptroller General*--(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating--

- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- (2) The data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition--

- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
- (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and--

- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- (2) For which cost or pricing data are required; or
- (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

I.12 FAR 52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

I.13 FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because--

- (1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
- (2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
- (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which-

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if-

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if-

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid-

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

I.14 FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.4031 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.4062 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either-

- (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or
- (2) The substance of the clause at FAR 52.21513, Subcontractor Cost or Pricing Data-Modifications.

I.15 FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (DEC 1998)

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

I.16 FAR 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

I.17 FAR 52.215-18 -- REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j).

I.18 FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall--

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

- (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
- (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.
- (c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

I.19 FAR 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA-MODIFICATIONS (OCT 1997)

(a) Exceptions from cost or pricing data.

(1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable-

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Information on modifications of contracts or subcontracts for commercial items.*

(A) If-

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include-

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or

describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

I.20 FAR 52.216-7 ALLOWABLE COST AND PAYMENT (DEC 2002)

(a) *Invoicing.*

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2, as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR), in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the 7th day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs.

(1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of this section, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only --

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for --

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made-

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check or other form of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless-

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks

(d) *Final indirect cost rates.*

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)

(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify

(i) the agreed-upon final annual indirect cost rates,

(ii) the bases to which the rates apply,

(iii) the periods for which the rates apply,

(iv) any specific indirect cost items treated as direct costs in the settlement, and

(v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates.

The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(6)

(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may--

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates --

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be --

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.*

(1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance

with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver --

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except --

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

I.21 FAR 52.216-10 INCENTIVE FEE (MARCH 1997)

- (a) *General.* The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.
- (b) *Target cost and target fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.

- (1) "Target cost," as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) of this clause.
 - (2) "Target fee," as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.
- (c) *Withholding of payment.* Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the applicable fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.
- (d) *Equitable adjustments.* When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.
- (e) Fee payable.
- (1) The fee payable under this contract shall be the target fee increased by see Clause B.5 cents for every dollar that the total allowable cost is less than the target cost or decreased by see Clause B.5 cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than see Clause B.5 percent or less than see Clause B.5 percent of the target cost.
 - (2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of-

- (i) Payments made under assignments; or
 - (ii) Claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.
- (3) If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.
- (4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of-
 - (i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;
 - (ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
 - (iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;
 - (iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to Third Persons clause;
 - (v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or
 - (vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.
- (5) All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.

- (f) *Contract modification.* The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.
- (g) *Inconsistencies.* In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

I.22 FAR 52.219-6 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JULY 1996)

(a) *Definition.* "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *General.*

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) *Agreement.* A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.

I.23 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small

business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract-

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern"-

(1) Means a small business concern-

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer that-

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

"Veteran-owned small business concern" means a small business concern-

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern-

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.
- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

I.24 FAR 52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996)

- (a) This clause does not apply to the unrestricted portion of a partial set-aside.
- (b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for-
 - (1) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.
 - (2) *Supplies (other than procurement from a nonmanufacturer of such supplies)*. The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
 - (3) *General construction*. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
 - (4) *Construction by special trade contractors*. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

I.25 FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

I.26 FAR 52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons

confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

- (a)(1) The worker is paid or is in an approved work training program on a voluntary basis;
 - (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
 - (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

I.27 FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-- OVERTIME COMPENSATION (SEP 2000)

- (a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- (b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.
- (c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) *Payrolls and basic records.* (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

I.28 FAR 52.222-6 DAVIS-BACON ACT (FEB 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at

the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division

Employment Standards Administration

U.S. Department of Labor

Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

I.29 FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

I.30 FAR 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records

which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the--

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U.S. Government Printing Office

Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify--

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized

representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective--

(1) For such period as the laws of the State in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

I.31 FAR 52.222-9 APPRENTICES AND TRAINEES (FEB 1988)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess

of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees*. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity*. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

I.32 FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

I.33 FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination--Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

I.34 FAR 52.222-12 CONTRACT TERMINATION—DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

I.35 FAR 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

I.36 FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

I.37 FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

I.38 FAR 52.222-16 APPROVAL OF WAGE RATES (FEB 1988)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

I.39 FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas,

transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

I.40 FAR 52.222-26 EQUAL OPPORTUNITY (APR 2002)

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to-

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
- (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
- (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
- (10) The Contractor shall include the terms and conditions of paragraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

I.41 FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) *Definitions.* As used in this clause-

"All employment openings" means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

"Executive and top management" means any employee-

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

"Other eligible veteran" means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

"Positions that will be filled from within the Contractor's organization" means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates,

subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Qualified special disabled veteran" means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

"Special disabled veteran" means-

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability-

(i) Rated at 30 percent or more; or
(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

"Veteran of the Vietnam era" means a person who-

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred-

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed-

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) *General.*

(1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as-

(i) Recruitment, advertising, and job application procedures;
(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
(iii) Rate of pay or any other form of compensation and changes in compensation;
(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
(v) Leaves of absence, sick leave, or any other leave;

- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Contractor including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).
- (c) *Listing openings.*
- (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.
- (2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
- (3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.
- (d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.
- (e) *Postings.*
- (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
- (2) The employment notices shall-

- (i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and
- (ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.
- (3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).
- (4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.
- (f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

I.42 FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor, including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings.* (1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

I.43 FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

- (a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on-
- (1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and
 - (2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and
 - (3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.
- (b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans' Employment Report (VETS-100 Report)".
- (c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date-
- (1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
 - (2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that-
- (1) The information is voluntarily provided;
 - (2) The information will be kept confidential;
 - (3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
 - (4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- (f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

I.44 FAR 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

(a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR part 4.

(c) *Compensation.*

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the

event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR part 4.

(e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for

services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR part 1925.

(i) *Records.*

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act-

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in

work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR part 4.

(p) *Contractor's certification.*

(1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, tolerances, and exemptions involving employment.*

Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips*. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision-

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes concerning labor standards*. The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning

labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

I.45 FAR 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

*This Statement is for Information Only:
It is not a Wage Determination*

Employee Class	Monetary Wage-Fringe Benefits
IGUA Guards	11.63
Boiler Operator Helper	15.19
Carpenter	18.05
Carpenter, Apprentice	15.19
Chemical Operator	18.05
Electrician	18.05
Electrician, Apprentice	15.19
Hazwat	16.34
Heavy Equipment Operator	18.05
Industrial Vacuum Loader Operator	14.61
Industrial Mechanic	18.05
Instrument Mechanic, Apprentice	15.19
Laborer, General	13.47
Laborer, Transportation	13.47
Machinist	18.05

Mason	18.05
Millwright	18.05
Millwright, Apprentice	15.19
Motor Vehicle Operator	16.34
Oiler	14.61
Painter	18.05
Pipefitter	18.05
Pipefitter, Apprentice	15.19
Private Motor Carrier Operator	18.05
Professional Warehouse Attendant	14.61
Pump Operator	15.19
QA Checker	16.34
Respirator Wash	14.08
Rigger	18.05
Stationary Engineer	18.05
Welder	18.05
Mailroom Supply Specialist	8.51
Word Processing Technician III	10.68
Accounting Technician II	10.68
Information/Records Specialist II	8.51
Information Mgmt. Technician II	10.68
Inventory Supply Specialist	10.68
Medical Assistant	10.68
Procurement Technician II	10.68
Secretary III	10.68
Engineer Aide II	10.68
Environmental/Laboratory Technician II	8.51

Information/Records Specialist III	10.68
Lead Mailroom Supply Specialist	13.23
Procurement Technician III	13.23
Sr. Reproduction Equipment Operator	13.23
Quality Verifier II	10.68
Environmental/Lab Technician III	10.68
Health Physics Technician III	10.68
Drafter III	10.68
Radiation Control Technician III	10.68
Sr. Accounting Technician	13.23
Sr. HR/Industrial Relations Specialist	13.23
Engineer Aide III	13.23
Sr. Graphics Artist	13.23
Engineer Technician	13.23
Sr. Drafter	13.23
Sr. Env./Laboratory Technician	13.23
Sr. Executive Secretary	13.23
Sr. Radiation Control Technician	13.23
Sr. Health Physics Technician	13.23
Sr. Industrial Hygiene Technician	13.23
Sr. Quality Verifier	13.23

I.46 FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) – ALTERNATE I (JUL 1995)

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any

applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material

(If none, insert "None") Identification No.

_____	_____
_____	_____
_____	_____

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

I.47 FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)

(a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

I.48 FAR 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

(a) *Definitions.* As used in this clause-

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall- within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration-

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about-

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will-

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

- (i) Taking appropriate personnel action against such employee, up to and including termination; or
- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

I.49 FAR 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000)

(a) *Definitions.* As used in this clause-

"Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

"Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

"Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*) and implementing regulations (40 CFR part 247).

I.50 FAR 52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

I.51 FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

I.52 FAR 52.224-2 PRIVACY ACT (APR 1984)

(a) The Contractor agrees to--

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies--

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c)(1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

I.53 FAR 52.225-1 BUY AMERICAN ACT-SUPPLIES (MAY 2002)

(a) *Definitions.* As used in this clause-

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means-

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means-

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act Certificate."

I.54 FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUL 2000)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

I.55 FAR 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000)

(a) *Definitions.* As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

"Interested party" means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the--

U.S. Department of the Interior

Bureau of Indian Affairs (BIA)

Attn: Chief, Division of Contracting and

Grants Administration

1849 C Street, NW,

MS-2626-MIB

Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee prime contract.

(iii) The target cost and ceiling price of a fixed-price incentive prime contract.

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

I.56 FAR 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

I.57 FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

I.58 FAR 52.227-3 PATENT INDEMNITY (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to--

(1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

I.59 FAR 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; *provided*, that this limitation shall not apply to-

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

I.60 FAR 52.232-17 INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the

Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

I.61 FAR 52.232-22 LIMITATION OF FUNDS (APR 1984)

(a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the

contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause--

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of--

(i) The amount then allotted to the contract by the Government or;

(ii) If this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of--

- (1) The amount previously allotted by the Government or;
- (2) If this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- (j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.
- (k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.
- (l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this contract.

I.62 FAR 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)

- (a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.
- (c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

I.63 FAR 52.232-25 PROMPT PAYMENT (FEB 2002) ALTERNATE I (FEB 2002)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the

Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments --

(1) Due date.

(i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice; provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments.

(i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are --

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (*e.g.*, periodic lease payments), the due date will be as specified in the contract.

(3) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (*e.g.*, shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (*e.g.*, 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (*e.g.*, 52.232-33, Payment by Electronic funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (*e.g.*, evidence of shipment.)

(4) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) *Computing penalty amount.* The Government will compute the interest penalty in accordance with Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of

the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(6) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(7) *Additional interest penalty.*

(i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)

(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall --

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (*e.g.*, payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payments.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Fast payment procedure due dates.* If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(d) *Overpayments.* If the Contractor becomes aware of a duplicate payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(e) *Invoices for interim payments.* For interim payments under this cost-reimbursement contract for services--

(1) Paragraphs (a)(2), (a)(3), (a)(4(ii)), (a)(4(iii)), and (a)(5)(i) do not apply;

(2) For purposes of computing late payment interest penalties that may apply, the due date for payment is the 30th day after the designated billing office receives a proper invoice; and

(3) The Contractor shall submit invoices for interim payments in accordance with paragraph (a) of FAR 52.216-7, Allowable Cost and Payment. If the invoice does not comply with contract requirements, it will be returned within 7 days after the date the designated billing office received the invoice.

I.64 FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER--CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) Method of payment.

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either-

- (i) Accept payment by check or some other mutually agreeable method of payment; or
- (ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Contractor EFT arrangements. If the Contractor has identified multiple payment receiving points (*i.e.*, more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for-

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and-

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(i) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(j) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

I.65 FAR 52.233-1 DISPUTES (JULY 2002) ALTERNATE I (DEC 1991).

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine

request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor shall provide the certification specified in paragraph

(d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

I.66 FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996) - ALTERNATE I (JUN 1985)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if--

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

I.67 FAR 52.236-19 ORGANIZATION AND DIRECTION OF THE WORK (APR 1984)

- (a) When this contract is executed, the Contractor shall submit to the Contracting Officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under this contract, and their respective duties. The Contractor shall keep the data furnished current by supplementing it as additional information becomes available.
- (b) Work performance under this contract shall be under the full-time resident direction of (1) the Contractor, if the Contractor is an individual; (2) one or more principal partners, if the Contractor is a partnership; or (3) one or more senior officers, if Contractor is a corporation, association, or similar legal entity. However, if the Contracting Officer approves, the Contractor may be represented in the direction of the work by a specific person or persons holding positions other than those identified in this paragraph.

I.68 FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to-

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (*i.e.*, costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

I.69 FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

(a) Notwithstanding any other clause of this contract--

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

I.70 FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)

- (a) *Definition.* "Proposal," as used in this clause, means either-
- (1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which-
 - (i) Relates to any payment made on the basis of billing rates; or
 - (ii) Will be used in negotiating the final contract price; or
 - (2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.
- (b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).
- (c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.
- (d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to-
- (1) The amount of the disallowed cost allocated to this contract; plus
 - (2) Simple interest, to be computed-
 - (i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and
 - (ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 9241 (85 Stat. 97).
- (e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.
- (f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*).
- (g) Pursuant to the criteria in FAR 42.7095, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.
- (h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

I.71 FAR 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)

- (a) The Contractor shall--
- (1) Certify any proposal to establish or modify final indirect cost rates;
 - (2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.

(c) The certificate of final indirect costs shall read as follows:

Certificate of Final Indirect Costs

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

I.72 FAR 52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

I.73 DEAR 952.242-70 TECHNICAL DIRECTION (DEC 2000)

(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

(1) Providing direction to the contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.

(2) Providing written information to the contractor that assists in interpreting drawings, specifications, or technical portions of the work description.

(3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government.

(b) The contractor will receive a copy of the written COR designation from the contracting officer. It will specify the extent of the COR's authority to act on behalf of the contracting officer.

(c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled "Changes;"

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions or specifications of the contract; or

(5) Interferes with the contractor's right to perform the terms and conditions of the contract.

(d) All technical direction shall be issued in writing by the COR.

(e) The contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the contractor, the Contracting Officer must:

(1) Advise the contractor in writing within thirty (30) days after receipt of the contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;

- (2) Advise the contractor in writing within a reasonable time that the Government will issue a written change order; or
- (3) Advise the contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR. [*81009]
- (f) A failure of the contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

**I.74 FAR 52.243-2 CHANGES--COST-REIMBURSEMENT (AUG 1987) -
ALTERNATE I (APR 1984)**

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the--
 - (1) Estimated cost, delivery or completion schedule, or both;
 - (2) Amount of any fixed fee; and
 - (3) Other affected terms and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

I.75 FAR 52.243-6 CHANGE ORDER ACCOUNTING (APR 1984)

The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause.

I.76 FAR 52.243-7 NOTIFICATION OF CHANGES (APR 1984)

(a) *Definitions.* "Contracting Officer," as used in this clause, does not include any representative of the Contracting Officer.

"Specifically Authorized Representative (SAR)," as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) *Notice.* The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within ____ (to be negotiated) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state--

- (1) The date, nature, and circumstances of the conduct regarded as a change;
- (2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;
- (3) The identification of any documents and the substance of any oral communication involved in such conduct;
- (4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- (5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including--
 - (i) What contract line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) *Continued performance.* Following submission of the notice required by paragraph (b) of this clause, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in paragraph (b) of this clause, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

(d) *Government response.* The Contracting Officer shall promptly, within _____ (to be negotiated) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either--

(1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Contractor's notice information is inadequate to make a decision under subparagraphs (d)(1), (2), or (3) of this clause, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) *Equitable adjustments.* (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made--

- (i) In the contract price or delivery schedule or both; and
 - (ii) In such other provisions of the contract as may be affected.
- (2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.

Note: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

I.77 FAR 52.244-2 SUBCONTRACTS (AUG 1998) – ALTERNATE II (AUG 1998)

(a) *Definitions.* As used in this clause--

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that--

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds--

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting--

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination--

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

I.78 FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)

- (a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- (b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

I.79 FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (APR 2003)

- (a) *Definitions.* As used in this clause-
"Commercial item" has the meaning contained in the clause at 52.202-1, Definitions.
"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:
 - (i) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
 - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
 - (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
- (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I.80 FAR 52.245-5 GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (JAN 1986)

(a) Government-furnished property.

(1) The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(3) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(4) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(5) If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property. (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract or (ii) substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has

agreed in the Schedule to make such property available for performing this contract and there is any--

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) *Title.* (1) The Government shall retain title to all Government-furnished property.

(2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon--

- (i) Issuance of the property for use in contract performance;
- (ii) Commencement of processing of the property for use in contract performance; or
- (iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5 and DOE Acquisition Regulation Subpart 945.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(f) *Access.* The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Limited risk of loss.* (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)--

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(3)(i) If the Contractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage--

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor

from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of--

- (i) The lost, destroyed, or damaged Government property;
- (ii) The time and origin of the loss, destruction, or damage;
- (iii) All known interests in commingled property of which the Government property is a part; and
- (iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of

the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which the Government is responsible.

(i) *Final accounting and disposition of Government property.* Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

(j) *Abandonment and restoration of Contractor premises.* Unless otherwise provided herein, the Government--

- (1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and
- (2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable

adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) *Communications*. All communications under this clause shall be in writing.

(l) *Overseas contracts*. If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

I.81 FAR 52.245-6 LIABILITY FOR GOVERNMENT PROPERTY (DEMOLITION SERVICES CONTRACTS) (APR 1984)

Except for reasonable wear and tear incident to removal and delivery to the Government, the Contractor assumes the risk of and shall be responsible for any loss or destruction of, or damage to, items of property, title to which-

- (a) Remains in the Government and that are to be delivered to the Government by the Contractor in performing the work; and
- (b) Is vested in the Contractor but that under the Termination clauses of this contract is revested in the Government upon notice of termination.

I.82 FAR 52.246-25 LIMITATION OF LIABILITY - SERVICES (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) of this clause, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that-

- (1) Occurs after Government acceptance of services performed under this contract; and
- (2) Results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of-

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

I.83 FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)

If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be:

Transportation is for the _____ [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

Transportation is for the _____ [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. _____. This may be confirmed by contacting _____ [*Name and address of the contract administration office listed in the contract*].

I.84 FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)

(a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds,

appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation):
[State reasons]:

(End of statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

I.85 FAR 52.247-67 SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (JUN 1997)

(a)(1) In accordance with paragraph (a)(2) of this clause, the Contractor shall submit to the General Services Administration (GSA) for audit, legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services on which the United States will assume freight charges that were paid-

(i) By the Contractor under a cost-reimbursement contract; and

(ii) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(2) Cost-reimbursement Contractors shall only submit for audit those CBL's with freight shipment charges exceeding \$50.00. Bills under \$50.00 shall be retained on-site by the Contractor and made available for GSA on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(b) The Contractor shall forward copies of paid freight bills/invoices, CBL's, passenger coupons, and supporting documents as soon as possible following the end of the month, in one package to the:

General Services Administration
Attn:FWA

1800FStreet,NW
Washington, DC 20405.

The Contractor shall include the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forwarded to GSA in a separate package.

(c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly by the Contractor to GSA. The Contractor shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.

(d) A statement prepared in duplicate by the Contractor shall accompany each shipment of transportation documents. GSA will acknowledge receipt of the shipment by signing and returning the copy of the statement. The statement shall show-

- (1) The name and address of the Contractor;
- (2) The contract number including any alpha-numeric prefix identifying the contracting office;
- (3) The name and address of the contracting office;
- (4) The total number of bills submitted with the statement; and
- (5) A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid showing the Contractor's voucher or check numbers.

I.86 FAR 52.249-6 TERMINATION (COST-REIMBURSEMENT) (SEP 1996) - ALTERNATE I (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if-- (1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.

- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
- (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government--
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and
 - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that

the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the

Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor--

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

Alternate I (Sep 1996). If the contract is for construction, substitute the following subparagraph (h)(4) for subparagraph (h)(4) of the basic clause:

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

I.87 FAR 52.249-14 EXCUSABLE DELAYS (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the

control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless--

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

I.88 FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

I.89 FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system (IFMS) vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

I.90 FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

I.91 DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

(a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.

(b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

I.92 DEAR 952.204-2 SECURITY (MAY 2002)

(a) *Responsibility.* It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the

contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) *Regulations.* The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.

(c) *Definition of classified information.* The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) *Definition of restricted data.* The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(e) *Definition of formerly restricted data.* The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.

(f) *Definition of National Security Information.* The term "National Security Information" means any information or material, regardless

of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(g) *Definition of Special Nuclear Material (SNM).* SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) *Security clearance of personnel.* The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and E.O. 12356.)

(j) Foreign Ownership, Control or Influence.

(1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Certificate Pertaining to Foreign Interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.

(4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.

(5) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

I.93 DEAR 952.204-75 PUBLIC AFFAIRS (DEC 2000)

(a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.

(b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.

(c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.

(d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.

(e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.

(f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.

(g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

I.94 DEAR 952.208-70 PRINTING (APR 1984)

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8½ by 11 inches one side only, one color. A requirement is defined as a single publication document.

(1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.

(2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a

contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.

(3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.

(4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

**I.95 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997) –
ALTERNATE I**

(a) Purpose. The purpose of this clause is to ensure that the contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product. (i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the contractor's performance of work under this contract for a period of three years after the completion of this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information. (i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial

plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is

based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award. (1) The contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.

(f) Subcontracts. (1) The contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms ``contract," "contractor," and "contracting officer" shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the contractor. If the conflict cannot be avoided or neutralized, the contractor must obtain the approval of the DOE contracting officer prior to entering into the subcontract.

I.96 DEAR 952.215-70 -- KEY PERSONNEL (DEC 2000)

(a) The personnel listed below or elsewhere in this contract [Insert cross-reference, if applicable] are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

[Insert List of Key Personnel unless listed elsewhere in the contract]

I.97 DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)

(a) Notwithstanding any other provision of the contract, the prior approval of the contracting officer shall be obtained when, in performance of this contract, the contractor acquires or proposes to acquire use of real property by:

(1) Purchase, on the Government's behalf or in the contractor's own name, with title eventually vesting in the Government.

(2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.

(3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.

(b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the contracting officer.

(c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

I.98 DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

[62 FR 2310, Jan. 16, 1997]

I.99 DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

(a) Definition.

Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for

contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

(b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

(c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

I.100 DEAR 952.227-82 RIGHTS TO PROPOSAL DATA (APR 1994)

Except for technical data contained on pages .. of the contractor's proposal dated .. which are asserted by the contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

[62 FR 2310, Jan. 16, 1997]

I.101 DEAR 952.231-71 INSURANCE-LITIGATION AND CLAIMS (APRIL 2002)

(a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(c)(1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.

(2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.

(d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.

(e) Except as provided in paragraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed-

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or limitation of funds clause of this contract.

(f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)-

(1) Which are otherwise unallowable by law or the provisions of this contract; or

(2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.

(h) In addition to the cost reimbursement limitations contained in 48 CFR Part 31, as supplemented in 48 CFR Part 931, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to workers' compensation actions (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements), shall not be reimbursed if such liabilities were caused by contractor managerial personnel's-

(1) Willful misconduct,

(2) Lack of good faith, or

(3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.

(j)(1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.

(4) The term "contractor's managerial personnel" is defined in the Property clause in this contract.

(k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance. (l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall-

(1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for

the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

I.102 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)

(a) *Authority*. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(b) *Definitions*. The definitions set out in the Act shall apply to this clause.

(c) *Financial protection*. Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.

(d)(1) *Indemnification*. To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e)(1) *Waiver of Defenses*. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1. Negligence;
2. Contributory negligence;
3. Assumption of risk; or
4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term *extraordinary nuclear occurrence* means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) *Notification and litigation of claims.* The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.

(h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) *Civil penalties*. The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.

(j) *Criminal penalties*. Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) *Inclusion in subcontracts*. The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

Effective date

() See Note II below for instructions related to this section on Effective Date.

Relationship to general indemnity

() See Note III below for instructions related to this section on Relationship to General Indemnity.

NOTE I: Paragraph (i) of the clause will be replaced with "Reserved" in contracts specifically exempted from civil penalties by section 234 of the Act. That subsection provides that the following DOE contractors are not subject to the assessment of civil penalties:

- (1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;
- (2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;
- (3) American Telephone and Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;
- (4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;
- (5) Princeton University (and any subcontractor or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;
- (6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and

(7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.

(End of note)

NOTE II: Contracts with an effective date after the date of (date to be that of the Final Rule resulting from the proposed rule herein), do not require the effective date provision in this clause. Delete the title.

Use the EFFECTIVE DATE title and the following language, for those contracts:

"() This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after .."

(1) Those that contained an indemnity pursuant to Public Law 85-840 prior to August 20, 1988, include the effective date provision above, inserting the effective date of the contract modification that replaced the Public Law 85-804 indemnity with an interim Price-Anderson based indemnity. Pursuant to the Price-Anderson Amendments Act, this substitution must have taken place by February 20, 1989.

(2) Those that contained, and continue to contain, either of the previous Nuclear Hazards Indemnity clauses, include the effective date provision above, inserting "August 20, 1988."

(3) Those with an effective date between August 20, 1988, and the date of the Final Rule, that (a) had "interim coverage" or (b) did not have "interim coverage" but have now been determined to be covered

under the PAAA, include the effective date provision above, inserting the contract effective date.

NOTE III: The following alternate will be added to the above Nuclear Hazards Indemnity Agreement clause for all contracts that contain a general authority indemnity pursuant to 950.7101. Caution: Be aware that for contracts that will have this provision added which do not contain an effective date provision, this paragraph shall be marked (1). In the event an Effective Date provision has been included, it shall be marked (m).

"() To the extent that the contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply."

(End of note)

I.103 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (DEC 2000)

(a) The contractor shall take advantage of travel discounts offered to Federal contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the contractor employee to furnish them a letter of identification signed by the authorized contracting officer.

(b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

(c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.

(d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.

(e) Car rentals. The Military Traffic Management Command (MTMC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.

(f) Obtaining travel discounts.

(1) To determine which vendors offer discounts to Government contractors, the contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

(2) The vendor providing the service may require the Government contractor to furnish a letter signed by the contracting officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer

[54 FR 17737, Apr. 25, 1989; 54 FR 26045, June 21, 1989; 60 FR 30005, Jun. 7, 1995; 65 FR 80994, Dec. 22, 2000]

I.104 DEAR 970.5204-2 LAWS, REGULATIONS AND DOE DIRECTIVES (DEC 2000)

(a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.

(b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "Changes."

(c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

(d) Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

(e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

I.105 DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

(a) For the purposes of this clause,

(1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) Employees include subcontractor employees.

(b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or

controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:

- (1) Define the scope of work;
- (2) Identify and analyze hazards associated with the work;
- (3) Develop and implement hazard controls;
- (4) Perform work within controls; and
- (5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.

(e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the

environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the contractor is responsible for compliance with the ES&H requirements applicable to this contract. The contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

(i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may choose not to require the subcontractor to submit a Safety Management System for the contractor's review and approval.

I.106 DEAR 970.5227-1 RIGHTS IN DATA-FACILITIES (DEC 2000)

(a) Definitions. (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.

(5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or

privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

(6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights. (1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software"); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material. (1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

(2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the technical data or computer software prior to its delivery.

(d) Subcontracting. (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or

operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

- (i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
 - (ii) Not proceed with the subcontract without the written authorization of the contracting officer.
- (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

(e) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No.----- with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(f) Rights in Restricted Computer Software. (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No.----- . It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used.

Restricted Rights Notice-Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No.----- with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of *17 U.S.C. 401*, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

(g) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

I.107 DEAR 970.5231-4 PREEXISTING CONDITIONS (DEC 2000)

(a) The Department of Energy agrees to reimburse the contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act, or failure to act which occurred before the contractor assumed responsibility on [Insert date contract began]. To the extent the acts or omissions of the contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to [Insert date contract began], the contractor shall be responsible in accordance with the terms and conditions of this contract.

(b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

**Part III - List of Documents, Exhibits,
and Other Attachments**

Section J

List of Attachments

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APPENDIX 1 - DOE DIRECTIVES APPLICABLE TO THE FFTF CLOSURE PROJECT CONTRACT

List B, “List of Applicable Directives,” as provided below, are those DOE directives that require contractor compliance. Changes to this list may be made in accordance with paragraph (b) of Section I.104, “Dear 970.5204-2 Laws, Regulations, and DOE Directives.” The contractor shall follow the established exemption process to obtain relief from requirements of these regulations where applicable. DOE directives may be found at <http://www.directives.doe.gov/>.

It is anticipated during the performance of this contract, the conditions for applicability of certain DOE Directives may no longer exist. For example, when spent nuclear fuel is removed from the 400 Area and transferred to the Hanford Site Management Contractor, the conditions for applicability for those DOE Directives addressing safeguards of such material may no longer exist. In any such situation where the contractor seeks relief from the requirements of such DOE Directives, the contractor may notify the Contracting Officer in writing explaining the reasons for its belief the DOE Directives no longer apply to contract performance. The Contracting Officer may determine the conditions for applicability of a DOE Directive still exist, and may direct the contractor to continue compliance with the DOE Directive. Additionally, even without such direction by the Contracting Officer, if the conditions for applicability of a DOE Directive once again arise (e.g. spent fuel is discovered unexpectedly during demolition efforts), the DOE Directive will immediately become applicable once again.

List B: List of Applicable Directives

NOTE: Those directives marked “Supplement” are DOE-RL Contractor Requirements Documents (CRD) that are in addition to the DOE-HQ CRDs. The Section B clarification and Section C supplemental requirements apply in addition to the HQ CRDs. Any specific clarifications or requirements do not apply unless otherwise noted.

Directive Identifier	Title	Changes
CRD N 142.1 (Supplement 0)	Unclassified Foreign Visits and Assignments	
CRD O 151.1A	Comprehensive Emergency Management System	
CRD M 200.1-1, Chapter 9 (Supplement Rev. 0)	Public Key Cryptography and Key Management	
CRD O 205.1 (Supplement Rev. 0)	Department of Energy Cyber Security Management Program	
CRD N 205.2	Foreign National Access to DOE Cyber Systems	
CRD N 205.3	Password Generation, Protection and Use	

Directive Identifier	Title	Changes
CRD N 205.4 (Supplement Rev. 0)	Handling Cyber Security Alerts and Advisories and Reporting Cyber Security Incidents	
CRN N 250.8	Cyber Security Requirements for Wireless Devices and Information Systems	
CRD O 221.1	Reporting Fraud, Waste and Abuse	
CRD O 221.2	Cooperation with the Office of Inspector General	
CRD O 225.1A	Accident Investigations	
CRD M 231.1-1A	Environment, Safety, and Health Reporting Manual	
CRD M 231.1-2 (Supplement Rev. 0)	Occurrence Reporting and Processing of Operations Information	
DOE/RW-0333P Rev. 13	Office of Civilian Radioactive Waste Management (OCRWM) "Quality Assurance Requirements and Description" (QARD)	
CRD O 350.1	Contractor Human Resource Management Programs	1
CRD O 413.1A	Management Control Program	
CRD O 414.1B	Quality Assurance	
CRD O 420. 1A (Supplement Rev. 0, including Section B, specific clarification 4)	Facility Safety	
CRD O 425.1B (Supplement Rev. 1)	Startup and Restart of Nuclear Facilities	
CRD O 430.1A (Supplement Rev. 2) Only CRD Section 2 for non- Rad facilities	Life Cycle Asset Management	
CRD O 433.1	Maintenance Management Program for DOE Nuclear Facilities	
CRD O 435.1 (Supplement Rev. 0)	Radioactive Waste Management	1
CRD O 440.1A (Supplement Rev. 0)	Worker Protection Management for DOE Federal and Contractor Employees	
CRD O 442.1A (Supplement Rev. 1)	Department of Energy Employee Concerns Program	
CRD O 450.1	Environmental Protection Program	
CRD O 460.1B	Packaging and Transportation Safety	

Directive Identifier	Title	Changes
CRD O 460.2 (Supplement Rev. 0 including specific clarification 1)	Departmental Materials, Transportation, and Packaging Management	1
CRD O 470.1, (Supplement Rev. 1)	Safeguards and Security Program	1
CRD M 470.1-1	Safeguards and Security Awareness Program	
CRD O 470.2B, (Supplement Rev. 2)	Independent Oversight and Performance Assurance Program	
CRD O 471.1A, (Supplement Rev. 0)	Identification and Protection of Unclassified Controlled Nuclear Information	
CRD O 471.2A (Supplement Rev. 1)	Information Security Program	
CRD M 471.2-1B (Supplement Rev. 1)	Manual for Classified Matter Protection and Control	
CRD M 471.2-1C, (Supplement Rev. 0)	Manual for Classified Matter Protection and Control	
CRD M 471.2-2	Classified Information Security Manual	
CRD O 471.3	Identifying and Protecting Official Use Only Information	
CRD M 471.3-1	Manual for Identifying and Protecting Official Use Only Information	
CRD N 471.3 (Supplement Rev. 0)	Reporting Incidents of Security Concern	
CRD O 472.1C	Personnel Security Activities	
CRD O 473.1	Physical Protection Program	
CRD M 473.1-1 (Supplement Rev. 0)	Physical Protection Program Manual	
CRD N 473.8	Security Conditions	
CRD O 474.1A	Control and Accountability of Nuclear Materials	
CRD M 474.1-1A (Supplement Rev. 0)	Manual for Control and Accountability of Nuclear Materials	
CRD M 474.1-2	Nuclear Materials Management and Safeguards System Reporting and Data Submission	2
CRD O 534.1A (Supplement Rev. 0)	Accounting	

CRD O 551.1A (Supplement Rev. 0)	Official Foreign Travel	1
DOE O 1450.4	Consensual Listening-in to or Recording Telephone/Radio Conversations	
DOE O 5400.5	Radiation Protection of the Public and the Environment	1,2
CRD O 5480.19 (Supplement Rev. 0)	Conduct of Operations Requirements for DOE Facilities	2
CRD O 5480.20A	Personnel Selection, Qualification, and Training Requirements for DOE Nuclear Facilities	
RLID 5633.3	Control & Accountability of Nuclear Materials at RL	
DOE O 5670.3	Counterintelligence Program	
DOE/RL-96-68, Rev. 2	Hanford Analytical Services Quality Assurance Requirements Documents	
DOE/RL-94-02, Rev. 2	Hanford Emergency Management Plan	
DOE/RL, 2002-12,	Hanford Site Radiological Health and Safety Manual	
RL-DOC. DOE-0223	Emergency Implementing Procedures	

APPENDIX 2 - WAGE DETERMINATION

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REGISTER OF WAGE DETERMINATIONS UNDER U.S. DEPARTMENT OF LABOR
THE SERVICE CONTRACT ACT EMPLOYMENT STANDARDS ADMINISTRATION
By direction of the Secretary of Labor WAGE AND HOUR DIVISION
WASHINGTON D.C. 20210

William W. Gross Division of Wage Determinations
Director Wage Determinations

Wage Determination No.: 1994-2569
Revision No.: 20
Date Of Last Revision: 03/05/2004

States: Oregon, Washington

Area: Oregon Counties of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union, Wallowa, Wheeler
Washington Counties of Benton, Franklin, Walla Walla, Yakima

****Fringe Benefits Required Follow the Occupational Listing****

OCCUPATION CODE - TITLE	MINIMUM WAGE RATE
01000 - Administrative Support and Clerical Occupations	
01011 - Accounting Clerk I	10.58
01012 - Accounting Clerk II	11.87
01013 - Accounting Clerk III	13.53
01014 - Accounting Clerk IV	16.34
01030 - Court Reporter	14.95
01050 - Dispatcher, Motor Vehicle	14.85
01060 - Document Preparation Clerk	12.01
01070 - Messenger (Courier)	9.49
01090 - Duplicating Machine Operator	12.01
01110 - Film/Tape Librarian	12.14
01115 - General Clerk I	9.20
01116 - General Clerk II	10.25
01117 - General Clerk III	12.01
01118 - General Clerk IV	13.46
01120 - Housing Referral Assistant	18.17
01131 - Key Entry Operator I	11.14
01132 - Key Entry Operator II	12.01
01191 - Order Clerk I	11.07
01192 - Order Clerk II	12.09
01261 - Personnel Assistant (Employment) I	12.01
01262 - Personnel Assistant (Employment) II	13.48
01263 - Personnel Assistant (Employment) III	15.08
01264 - Personnel Assistant (Employment) IV	17.11
01270 - Production Control Clerk	17.02
01290 - Rental Clerk	11.59
01300 - Scheduler, Maintenance	13.99
01311 - Secretary I	13.99
01312 - Secretary II	15.63
01313 - Secretary III	18.66
01314 - Secretary IV	20.92
01315 - Secretary V	23.14
01320 - Service Order Dispatcher	15.10
01341 - Stenographer I	12.01
01342 - Stenographer II	13.33
01400 - Supply Technician	20.92
01420 - Survey Worker (Interviewer)	12.55
01460 - Switchboard Operator-Receptionist	10.38
01510 - Test Examiner	15.63
01520 - Test Proctor	15.63
01531 - Travel Clerk I	11.74

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01532 - Travel Clerk II		12.62
01533 - Travel Clerk III		13.50
01611 - Word Processor I		11.34
01612 - Word Processor II		12.74
01613 - Word Processor III		14.25
03000 - Automatic Data Processing Occupations		
03010 - Computer Data Librarian		11.06
03041 - Computer Operator I		13.18
03042 - Computer Operator II		16.28
03043 - Computer Operator III		20.58
03044 - Computer Operator IV		23.79
03045 - Computer Operator V		25.52
03071 - Computer Programmer I (1)		17.97
03072 - Computer Programmer II (1)		23.03
03073 - Computer Programmer III (1)		27.32
03074 - Computer Programmer IV (1)		27.62
03101 - Computer Systems Analyst I (1)		24.00
03102 - Computer Systems Analyst II (1)		27.62
03103 - Computer Systems Analyst III (1)		27.62
03160 - Peripheral Equipment Operator		13.52
05000 - Automotive Service Occupations		
05005 - Automotive Body Repairer, Fiberglass		18.71
05010 - Automotive Glass Installer		16.84
05040 - Automotive Worker		16.84
05070 - Electrician, Automotive		17.78
05100 - Mobile Equipment Servicer		14.95
05130 - Motor Equipment Metal Mechanic		18.71
05160 - Motor Equipment Metal Worker		16.84
05190 - Motor Vehicle Mechanic		18.71
05220 - Motor Vehicle Mechanic Helper		14.00
05250 - Motor Vehicle Upholstery Worker		15.88
05280 - Motor Vehicle Wrecker		16.84
05310 - Painter, Automotive		17.78
05340 - Radiator Repair Specialist		16.84
05370 - Tire Repairer		14.44
05400 - Transmission Repair Specialist		18.71
07000 - Food Preparation and Service Occupations		
(not set) - Food Service Worker		9.89
07010 - Baker		15.66
07041 - Cook I		13.97
07042 - Cook II		15.66
07070 - Dishwasher		9.89
07130 - Meat Cutter		15.66
07250 - Waiter/Waitress		11.04
09000 - Furniture Maintenance and Repair Occupations		
09010 - Electrostatic Spray Painter		17.78
09040 - Furniture Handler		11.71
09070 - Furniture Refinisher		17.78
09100 - Furniture Refinisher Helper		14.00
09110 - Furniture Repairer, Minor		15.88
09130 - Upholsterer		17.78
11030 - General Services and Support Occupations		
11030 - Cleaner, Vehicles		9.92
11060 - Elevator Operator		10.88
11090 - Gardener		15.35
11121 - House Keeping Aid I		8.76
11122 - House Keeping Aid II		10.39
11150 - Janitor		11.97
11210 - Laborer, Grounds Maintenance		12.13
11240 - Maid or Houseman		9.22
11270 - Pest Controller		17.88
11300 - Refuse Collector		11.97
11330 - Tractor Operator		14.51

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11360 - Window Cleaner		13.35
12000 - Health Occupations		
12020 - Dental Assistant		13.83
12040 - Emergency Medical Technician (EMT)/Paramedic/Ambulance Driver		13.54
12071 - Licensed Practical Nurse I		12.79
12072 - Licensed Practical Nurse II		14.34
12073 - Licensed Practical Nurse III		16.05
12100 - Medical Assistant		12.36
12130 - Medical Laboratory Technician		13.55
12160 - Medical Record Clerk		12.40
12190 - Medical Record Technician		13.58
12221 - Nursing Assistant I		8.23
12222 - Nursing Assistant II		9.25
12223 - Nursing Assistant III		10.09
12224 - Nursing Assistant IV		11.32
12250 - Pharmacy Technician		12.82
12280 - Phlebotomist		13.01
12311 - Registered Nurse I		19.16
12312 - Registered Nurse II		23.46
12313 - Registered Nurse II, Specialist		23.46
12314 - Registered Nurse III		28.39
12315 - Registered Nurse III, Anesthetist		28.39
12316 - Registered Nurse IV		34.00
13000 - Information and Arts Occupations		
13002 - Audiovisual Librarian		17.92
13011 - Exhibits Specialist I		15.52
13012 - Exhibits Specialist II		18.52
13013 - Exhibits Specialist III		20.53
13041 - Illustrator I		15.52
13042 - Illustrator II		18.52
13043 - Illustrator III		20.53
13047 - Librarian		23.17
13050 - Library Technician		13.59
13071 - Photographer I		15.10
13072 - Photographer II		17.46
13073 - Photographer III		20.92
13074 - Photographer IV		23.31
13075 - Photographer V		25.87
15000 - Laundry, Dry Cleaning, Pressing and Related Occupations		
15010 - Assembler		8.62
15030 - Counter Attendant		8.62
15040 - Dry Cleaner		10.89
15070 - Finisher, Flatwork, Machine		8.62
15090 - Presser, Hand		8.62
15100 - Presser, Machine, Drycleaning		8.62
15130 - Presser, Machine, Shirts		8.62
15160 - Presser, Machine, Wearing Apparel, Laundry		8.62
15190 - Sewing Machine Operator		11.65
15220 - Tailor		12.41
15250 - Washer, Machine		9.38
19000 - Machine Tool Operation and Repair Occupations		
19010 - Machine-Tool Operator (Toolroom)		18.96
19040 - Tool and Die Maker		22.98
21000 - Material Handling and Packing Occupations		
21010 - Fuel Distribution System Operator		15.89
21020 - Material Coordinator		16.65
21030 - Material Expediter		16.65
21040 - Material Handling Laborer		10.15
21050 - Order Filler		11.28
21071 - Forklift Operator		11.81
21080 - Production Line Worker (Food Processing)		12.34
21100 - Shipping/Receiving Clerk		11.14
21130 - Shipping Packer		11.23

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21140 - Store Worker I		10.09
21150 - Stock Clerk (Shelf Stocker; Store Worker II)		13.61
21210 - Tools and Parts Attendant		12.32
21400 - Warehouse Specialist		12.76
23000 - Mechanics and Maintenance and Repair Occupations		
23010 - Aircraft Mechanic		18.66
23040 - Aircraft Mechanic Helper		14.00
23050 - Aircraft Quality Control Inspector		19.68
23060 - Aircraft Servicer		15.88
23070 - Aircraft Worker		16.84
23100 - Appliance Mechanic		17.78
23120 - Bicycle Repairer		14.44
23125 - Cable Splicer		20.58
23130 - Carpenter, Maintenance		18.69
23140 - Carpet Layer		16.84
23160 - Electrician, Maintenance		22.97
23181 - Electronics Technician, Maintenance I		16.75
23182 - Electronics Technician, Maintenance II		20.50
23183 - Electronics Technician, Maintenance III		21.58
23260 - Fabric Worker		16.77
23290 - Fire Alarm System Mechanic		19.87
23310 - Fire Extinguisher Repairer		15.76
23340 - Fuel Distribution System Mechanic		19.87
23370 - General Maintenance Worker		16.84
23400 - Heating, Refrigeration and Air Conditioning Mechanic		18.71
23430 - Heavy Equipment Mechanic		21.15
23440 - Heavy Equipment Operator		20.13
23460 - Instrument Mechanic		19.87
23470 - Laborer		9.99
23500 - Locksmith		17.78
23530 - Machinery Maintenance Mechanic		18.71
23550 - Machinist, Maintenance		18.71
23580 - Maintenance Trades Helper		14.00
23640 - Millwright		19.87
23700 - Office Appliance Repairer		18.84
23740 - Painter, Aircraft		18.84
23760 - Painter, Maintenance		17.78
23790 - Pipefitter, Maintenance		22.58
23800 - Plumber, Maintenance		21.45
23820 - Pneudraulic Systems Mechanic		19.87
23850 - Rigger		19.87
23870 - Scale Mechanic		17.81
23890 - Sheet-Metal Worker, Maintenance		20.58
23910 - Small Engine Mechanic		17.81
23930 - Telecommunication Mechanic I		19.87
23931 - Telecommunication Mechanic II		20.91
23950 - Telephone Lineman		19.87
23960 - Welder, Combination, Maintenance		18.71
23965 - Well Driller		19.87
23970 - Woodcraft Worker		19.87
23980 - Woodworker		15.76
24000 - Personal Needs Occupations		
24570 - Child Care Attendant		9.13
24580 - Child Care Center Clerk		12.40
24600 - Chore Aid		10.51
24630 - Homemaker		13.13
25000 - Plant and System Operation Occupations		
25010 - Boiler Tender		22.56
25040 - Sewage Plant Operator		21.39
25070 - Stationary Engineer		22.56
25190 - Ventilation Equipment Tender		18.71
25210 - Water Treatment Plant Operator		21.19
27000 - Protective Service Occupations		

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(not set) - Police Officer	25.20
27004 - Alarm Monitor	13.67
27006 - Corrections Officer	18.00
27010 - Court Security Officer	20.23
27040 - Detention Officer	18.00
27070 - Firefighter	20.67
27101 - Guard I	10.89
27102 - Guard II	13.67
28000 - Stevedoring/Longshoremen Occupations	
28010 - Blocker and Bracer	17.67
28020 - Hatch Tender	17.67
28030 - Line Handler	17.67
28040 - Stevedore I	16.36
28050 - Stevedore II	18.84
29000 - Technical Occupations	
21150 - Graphic Artist	19.54
29010 - Air Traffic Control Specialist, Center (2)	29.93
29011 - Air Traffic Control Specialist, Station (2)	20.63
29012 - Air Traffic Control Specialist, Terminal (2)	22.72
29023 - Archeological Technician I	14.36
29024 - Archeological Technician II	16.05
29025 - Archeological Technician III	19.89
29030 - Cartographic Technician	21.05
29035 - Computer Based Training (CBT) Specialist/ Instructor	24.72
29040 - Civil Engineering Technician	20.48
29061 - Drafter I	11.56
29062 - Drafter II	12.99
29063 - Drafter III	16.69
29064 - Drafter IV	19.89
29081 - Engineering Technician I	13.26
29082 - Engineering Technician II	14.88
29083 - Engineering Technician III	17.97
29084 - Engineering Technician IV	21.05
29085 - Engineering Technician V	26.52
29086 - Engineering Technician VI	35.66
29090 - Environmental Technician	19.95
29100 - Flight Simulator/Instructor (Pilot)	27.62
29160 - Instructor	19.17
29210 - Laboratory Technician	17.26
29240 - Mathematical Technician	20.14
29361 - Paralegal/Legal Assistant I	15.30
29362 - Paralegal/Legal Assistant II	18.89
29363 - Paralegal/Legal Assistant III	21.04
29364 - Paralegal/Legal Assistant IV	25.65
29390 - Photooptics Technician	20.14
29480 - Technical Writer	18.76
29491 - Unexploded Ordnance (UXO) Technician I	19.02
29492 - Unexploded Ordnance (UXO) Technician II	23.01
29493 - Unexploded Ordnance (UXO) Technician III	27.58
29494 - Unexploded (UXO) Safety Escort	19.02
29495 - Unexploded (UXO) Sweep Personnel	19.02
29620 - Weather Observer, Senior (3)	18.61
29621 - Weather Observer, Combined Upper Air and Surface Programs (3)	16.74
29622 - Weather Observer, Upper Air (3)	16.74
31000 - Transportation/ Mobile Equipment Operation Occupations	
31030 - Bus Driver	14.13
31260 - Parking and Lot Attendant	9.75
31290 - Shuttle Bus Driver	12.63
31300 - Taxi Driver	11.88
31361 - Truckdriver, Light Truck	12.12
31362 - Truckdriver, Medium Truck	13.77
31363 - Truckdriver, Heavy Truck	16.89
31364 - Truckdriver, Tractor-Trailer	16.89

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99000 - Miscellaneous Occupations	
99020 - Animal Caretaker	12.19
99030 - Cashier	9.04
99041 - Carnival Equipment Operator	13.74
99042 - Carnival Equipment Repairer	14.68
99043 - Carnival Worker	10.29
99050 - Desk Clerk	9.13
99095 - Embalmer	19.02
99300 - Lifeguard	9.99
99310 - Mortician	19.02
99350 - Park Attendant (Aide)	12.55
99400 - Photofinishing Worker (Photo Lab Tech., Darkroom Tech)	9.96
99500 - Recreation Specialist	13.90
99510 - Recycling Worker	14.64
99610 - Sales Clerk	10.83
99620 - School Crossing Guard (Crosswalk Attendant)	11.54
99630 - Sport Official	9.99
99658 - Survey Party Chief (Chief of Party)	19.53
99659 - Surveying Technician (Instr. Person/Surveyor Asst./Instr.)	16.79
99660 - Surveying Aide	12.27
99690 - Swimming Pool Operator	17.73
99720 - Vending Machine Attendant	14.64
99730 - Vending Machine Repairer	17.73
99740 - Vending Machine Repairer Helper	14.64

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$2.36 an hour or \$94.40 a week or \$409.07 a month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 5 years, 4 weeks after 10 years, and 5 weeks after 20 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE PARENTHESES AFTER THEM RECEIVE THE FOLLOWING BENEFITS (as numbered):

- 1) Does not apply to employees employed in a bona fide executive, administrative, or professional capacity as defined and delineated in 29 CFR 541. (See CFR 4.156)
- 2) APPLICABLE TO AIR TRAFFIC CONTROLLERS ONLY - NIGHT DIFFERENTIAL: An employee is entitled to pay for all work performed between the hours of 6:00 P.M. and 6:00 A.M. at the rate of basic pay plus a night pay differential amounting to 10 percent of the rate of basic pay.
- 3) WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time

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employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

** UNIFORM ALLOWANCE **

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial

laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

** NOTES APPLYING TO THIS WAGE DETERMINATION **

Source of Occupational Title and Descriptions:

The duties of employees under job titles listed are those described in the

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"Service Contract Act Directory of Occupations," Fourth Edition, January 1993, as amended by the Third Supplement, dated March 1997, unless otherwise indicated. This publication may be obtained from the Superintendent of Documents, at 202-783-3238, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Copies of specific job descriptions may also be obtained from the appropriate contracting officer.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall

be retroactive to the commencement date of the contract. {See Section 4.6 (C)(vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

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When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

APPENDIX 3 - SHUTDOWN SYSTEM GROUPS

Group 0: Systems Shutdown During Operation (Inactive Systems)

61A	Closed Loop #2 Primary Coolant System
61B	Closed Loop #2 Secondary Coolant System
61C	Closed Loop #2 DHX System
61D	Closed Loop #2 CLIRA
61E	Closed Loop #1 Primary Coolant System
61F	Closed Loop #1 Secondary Coolant System
61G	Closed Loop #1 DHX System
61H	Closed Loop #1 CLIRA
85B	CLS Primary Sodium Sampling/Monitoring
85D	CLS Secondary Sodium Sampling System

Group 1: Systems Shutdown for FFTF Standby

12J	Zero Time Outage - 120 Volt AC System
12H	Emergency Diesel and Turbine Generators (Diesels only)
23L	Diesel Fuel System to Diesel Generators
23S	Mobiltherm™ System
25A	Containment H&V System (Partial)
25D	Control Building and AEB-E H&V System (Partial)
25E	RSB and AEB-W H&V System (Partial)
25F	HTS and DHX Building H&V System (Partial)
25W	Meteorological System
26B	AFFF System
27M	Containment Margins
82E	Radioactive Argon Processing System (RAPS)
82L	Nitrogen Atmosphere Sampling/Analysis
85E	Argon Cover Gas Sampling and Monitoring
90B	HTS DHX Control System (Fans, Dampers, Gates)
90C	Reactor Flux Control System

91A	PDS Computer, Peripherals, and CRT Displays
91C	PDS Multiplexer
91D	EDS/DAS - Experimenters Data System/Data Acquisition System
91E	EDS/CALC Experimenters Data System/Calculational Computer, Loose Parts Monitoring System (LPMS) Experimenters (Room 404) Computer Equipment
93C	Seismic Monitoring (Partial)
94A	Fuel Failure Monitoring System
96A	Process Radiation Monitoring (Partial)
96B	Area Radiation Monitoring (Partial)
99A	Plant Protection System
99B	Containment Isolation System
36A	Fusion MOTA Glove Box and Controls

Group 2: Systems Shutdown after Fuel Removed from the Reactor Vessel

12A	125 Volt 1E DC System
31A	Reactor Internals (except Instrument Trees)
92	Reactor and Vessel Instrumentation (Flow and Temperature Removable Instrumentation Assembly [FTRIA])
95A	Flux Monitoring System

Group 3: Systems Shutdown after Secondary Sodium Drain

12C	2.4 KV Systems (A1, A2, A3) (part)
23M	Fuel Oil to DHX Heaters
26C	Fire Protection Gas System (partial; Halon and DHX Nitrogen Flood)
26D	Fire Detection & Alarm System (part; DHX's)
27M	Containment Margins
51B	HTS Secondary Coolant System
51C	HTS Dump Heat Exchanger System (Tube Bundles and Enclosure)
81F	Reactor Secondary Sodium Processing
85C	HTS Secondary Sodium Sampling System
90A	HTS Flow Control System
90B	HTS DHX Control System
94A	Fuel Failure Monitoring System
101	Operator Training Simulator

Group 4: Systems Shutdown after Primary Sodium Drain

- 25J Reactor Head Compartment/Cavity Gas Cooling System
- 25L Closed Loop Gas Cooling System
- 25M HTS Gas Cooling System
- 31A Reactor Internals, Instrument Trees, Low Level Flux Monitors, and Fusion MOTA
- 31B Control Rod Drive Mechanisms
- 32A Reactor Enclosure
- 41A In-Vessel Handling Machine
- 41-4 Spoolpiece Closure Equipment
- 51A HTS Primary Coolant System
- 81B Reactor Primary Sodium Processing
- 85A HTS Primary Sodium Sampling/Monitoring (All except N-48 and C-680)
- 90D Reactor Plant Control Panels
- 92 Reactor and Vessel Instrumentation
- 93B Sodium Piping Trace Heat and Controls (All except IDS)
- 93D Na Leak Detection and Alarm System (All except IDS)

Group 5: Systems Shutdown after NaK System Flush

- 23S Mobiltherm System (Remainder, eliminate nitrogen blanket)
- 81E NaK Cold Trap Cooling System

Group 6: Group Deleted

Group 7: Systems Shutdown after FSF Sodium Drain

- 23Y FSF Auxiliary Systems
- 23Z FSF Chilled Water System
- 25Y FSF Oxygen Monitoring
- 25Z FSF Vault Cooling
- 41-14 FSF Turntable Drive, PHF, FVA, Head and Plugs
- 81Y FSF Sodium Purification
- 81Z FSF NaK Heat Transfer
- 85Z FSF Sodium Sampling
- 93Z FSF Trace Heating and Controls

- 93C Seismic Monitoring
- 96Z FSF Radiation Monitoring System

Group 8: Systems Shutdown after IDS Sodium Drain

- 25K IDS Vessel and Tank Cell Gas Cooling System
- 41-5 Interim Decay Storage
- 81A Sodium Receiving and Unloading System
- 81C IDS and Primary Sodium Storage/Processing
- 81D NaK IDS Cooling System
- 85A HTS Primary Sodium Sampling/Monitoring (Final N-48 and C-680)
- 93B Sodium Piping Trace Heat and Controls
- 93D Na Leak Detection and Alarm System
- 99A IDS Vessel Temperature Instrumentation

Group 9: Systems Shutdown After IEM Cell Operations Complete

- 23R Demineralized Water System
- 25N IEM Cell and Fuel Subassembly Gas Cooling System
- 41D IEM Cell and Sodium Removal System
- 44 Shielded Cell Transfer Cask
- 41C Core Component Handling and Storage Includes the following:
 - 41-3 CLEM
 - 41-6 TACS, CCCS-S and N, and SPSS-1 and 2
 - 41-7 Refueling Floor Valves
 - 41-8 Plug Handling Fixture
 - 41-9 Core Component Pot
 - 41-11 BLTC
 - 41-13 Cask Loading Station
 - 41-13 Solid Waste Cask
 - 41-13 Disposable Solid Waste Cask, M-058
 - 41-13 Solid Waste Transfer Pit
 - 41-3 CLEM Grapple Change Fixture
- 44 Maintenance Glovebox
- 44A Segmented Maintenance Cask, Component Removal/Installation Equipment, Cask and Handling Equipment, Component

Disassembly/Assembly Equipment,
Repair Tooling and Equipment
82N IEM Cell Argon Purification System

27B RCB (Includes air locks, cranes [Polar Crane], etc.)
82A Argon Supply and Distribution
82D Cell Atmosphere Processing System

Group 10: Final Systems Shutdown

11 Primary Electrical Power
12A 125 Volt 1E DC System
12B 13.8 KV System
12C 2.4 KV Systems (A4)
12D 480 VAC Load Centers
12E 480 VAC Emergency Load Centers
12F Lighting
12G 120 Volt System, Regulated & Unregulated
12K 480 Volt Motor Control System
12L Freeze and Cathodic Protection
12T Turbine Generator
12M Non-1E 125VDC Battery System
12Z FSF Electric – All
15 Communications
21 Reactor Support Buildings
21Z FSF Land Improvements & Building Structures
23A Well Water System
23B Sanitary Water System
23C Cooling Tower System
23D Cooling Water Systems
23F Ex-Containment Chilled Water System
23G In-Containment Chilled Water System
23H Process/Sanitary Drains
23J Instrument Air System
23P Service Air System
24A Radioactive Liquid Waste System
25A Containment H&V System
25B Oxygen Monitoring
25D Control Building and AEB-E H&V System
25E RSB and AEB-W H&V System
25F HTS and DHX Building H&V System
25G CLS HVAC (partial)
25H RAPS and CAPS H&V System
25X FSF Building H&V System
26A Fire Protection Water Supply
26B Fire Sprinkler System
26C Fire Protection Gas Systems
26D Fire Detection and Alarm Systems

82E RAPS
82G Nitrogen Supply and Distribution System
82J Vacuum System
82Y FSF Nitrogen System
82Z FSF Argon System
93A Plant Annunciators
96A Process Radiation Monitoring System
96B Area Radiation Monitoring System
98 Information Systems
99B Containment Isolation System

APPENDIX 4 - BUILDINGS TO BE DEMOLISHED FOR THE FFTF CLOSURE PROJECT

Building Number	Building Description
402	Sodium Storage Facility
403	Fuel Storage Facility
405	FFTF Reactor Containment Building
408A	Main Heat Dump, East
408B	Main Heat Dump, South
408C	Main Heat Dump, West
409A	Closed Loop Heat Dump, East #1
409B	Closed Loop Heat Dump, East #2
432A	ISA Covered Equipment Storage
436	Training Facility
437	Maintenance & Storage Facility (MASF)
440	90-day Covered Storage Pad
451A	Substation
453A	Transformer Station, East DHX A1 2.4kV
453B	Transformer Station, South DHX A2 2.4kV
453C	Transformer Station, West DHX A3 2.4kV
4621E	Auxiliary Equipment Building, East
4621W	Auxiliary Equipment Building, West
4701	Former FFTF Guard Station
4703	FFTF Control Building
4710	FFTF Office Bldg
4713A	Riggers & Drivers Operations Facility
4713B	FFTF Maintenance Shop
4713C	Contaminated Storage Warehouse
4713D	Interim Maintenance and Storage Facility
4716	FFTF Rigging Loft
4717	Reactor Service Building
4718	400 Area Interim Storage Area Pad
4721	FFTF Emergency Generator Building
4734A	FFTF Argon/Nitrogen DEWAR Pad
480A	Water Supply Well House (P-14)
480B	Water Supply Well House (P-15)
480D	Water Supply Well House (P-16)
481	Water Pump House
481A	Water Pump House
482A	Water Storage Tank (T-58)
482B	Water Storage Tank (T-87)
482C	Water Storage Tank (T-330)
483	Cooling Towers
483B	Water Treatment Building
484	FFTF In-Containment Chiller Water Equipment Bldg
4842B	Switchgear Building for Pump Houses
491E	HTS Service Building, East
491S	HTS Service Building, South
491W	HTS Service Building, West

APPENDIX 5 - REGULATORY FRAMEWORK

- (a) The contractor will manage the integration of deactivation activities with decontamination and decommissioning (D&D) activities in accordance with, but not limited to, the policies, regulations, and orders discussed below. The contractor shall assist DOE's interface with the regulatory agencies, including meeting attendance. The contractor shall also maintain applicable administrative records for project activities. A graded approach is to be used when risks are acceptable.

- (b) National Environmental Policy Act (NEPA):

The scope of work is subject to the NEPA and the DOE NEPA implementing procedures (10CFR1021) and DOE will comply with the DOE O 541.1B Change 1 regarding NEPA compliance.

The "DOE/EA-0993, Environmental Assessment Shutdown of the Fast Flux Test Facility, May 1995" (EA) and Finding of No Significant Impact (FONSI), May 1995, addressed the environmental, safety and health issues for impacts associated with FFTF deactivation and S&M activities. It approved the permanent shut down of FFTF by removing the fuel, draining and de-energizing the systems, removing the stored radioactive and hazardous materials, and performing other actions to place the facility in a radiologically and industrially safe shutdown state. Appropriate surveillance and maintenance would be performed to prevent unacceptable risks to persons or the environment until final D&D of the facility is completed. A final Nuclear Infrastructure-Programmatic EIS (NI-PEIS, DOE/EIS-0310) was issued in Dec 2000 (DOE 2000) followed by the ROD in January 2001 which called for the permanent deactivation of the FFTF. In April 2001, the DOE suspended this FFTF decision in the ROD pending review of available data to ensure that all relevant factors affecting the decision in the ROD to close the FFTF were addressed. On December 19, 2001, DOE announced that the restart of FFTF was impracticable and that its deactivation would proceed.

On July 8, 2003, DOE committed to perform a NEPA EIS to evaluate reasonable alternatives, including, but not necessarily limited to, the No Action, Entombment, and Removal alternatives for the final disposition (i.e., decommissioning and dismantlement) of the FFTF. The preferred alternative would be identified in the EIS and established in the NEPA EIS Record of Decision (ROD) within 12 to 18 months after the Closure Project contract award. Upon completion and issuance of the EIS and ROD, physical decommissioning activities may commence. No actions that foreclose final disposition (i.e., decommissioning) alternatives shall be taken beforehand

In addition to the above, the Contractor actions are subject to the following related NEPA decisions:

- *Environmental Statement, Fast Flux Test Facility, Richland, Washington* (WASH-1510) provided information on all aspects of environmental impacts associated with the construction and operation of FFTF.

- *Final Hanford Comprehensive Land Use Plan Environmental Impact Statement (DOE/EIS-0222-F)* included a comprehensive land use plan which identifies industrial development in the 400 Area.
- *Hanford Reach of the Columbia River Comprehensive River Conservation Study and Environmental Impact Statement (National Park Service, June 1994)*
- *Final Environmental Impact Statement: Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs (DOE/EIS-0203-F)*
- *Environmental Assessment: Management of Hanford Site Non-Defense Production Reactor Spent Nuclear Fuel, Hanford Site, Richland, Washington (DOE/EA-1185).*
- *Final Environmental Impact Statement for the Treatment and Management of Sodium-Bonded Spent Nuclear Fuel (DOE/EIS-0306)*
- *Environmental Assessment: Shutdown of Experimental Breeder Reactor-II at Argonne National Laboratory-West (DOE/EA-1199)*
- *Revised Draft Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement (HSW EIS)*

A few buildings and equipment that are not needed for FFTF deactivation may be eligible under 10 CFR 1021 for exclusion from requirements for preparation of NEPA documents (i.e., EA or EIS). The following are Hanford Site-wide Categorical Exclusions (CX) which may be applicable. Specific uses of CXs require the approval by RL's NEPA Compliance Officer:

- (1) B1.16: CX FOR THE REPAIR, REMOVAL, HANDLING, AND DISPOSAL OF ASBESTOS-CONTAINING MATERIALS FROM HANFORD SITE BUILDINGS AND STRUCTURES
 - (2) B1.17: CX FOR THE MANAGEMENT OF POLYCHLORINATED BIPHENYLS AND POLYCHLORINATED BIPHENYL ITEMS, HANFORD SITE, RICHLAND WASHINGTON
 - (3) B1.23: CX FOR THE DEMOLITION OF SURPLUS/EXCESS BUILDINGS AND STRUCTURES, HANFORD SITE, RICHLAND, WASHINGTON
 - (4) B1.27/28: CX FOR BUILDING STABILIZATION AND DEACTIVATION ACTIVITIES, HANFORD SITE, RICHLAND, WASHINGTON
 - (5) B1.31: CX FOR RELOCATION OF MACHINERY AND EQUIPMENT HANFORD SITE, RICHLAND WASHINGTON.
- (c) Tri-Party Agreement (TPA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA):

FFTF is defined as a Hanford Site “key” facility subject to the decommissioning process delineated in Sections 7.0 and 8.0 of the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement). In Section 8.0 of the TPA, an approach is defined by which the three TPA agencies, DOE, Ecology, and EPA, will take a “key” Hanford Site facility, such as FFTF,

Table J.1. FFTF Tri-Party Agreement Milestones

Number	Description	Due Date
from operational status to its final end state condition. Three sequential phases include transition (i.e., deactivation or shutdown), S&M, and disposition (i.e., final D&D end state condition). The contractor is responsible for performing its activities in compliance with all TPA requirements and for meeting the TPA milestone commitments.		
M-81-13	Complete reactor and heat transport system sodium drain	6/30/2005
M-81-11	Submit FFTF end point criteria document	8/31/2005
M-92-10	Submit Sodium Disposition Evaluation Report	9/30/2005
M-81-14-T01	Complete fuel storage facility sodium drain	4/30/2007
M-81-14-T02	Initiate interim decay storage vessel sodium drain	6/30/2008
M-81-00A-T02	Complete transfer of unirradiated fuel to secure onsite storage	3/31/2009
M-81-00A-T03	Complete transfer of irradiated fuel to secure onsite storage	3/31/2009
M-81-00A-T04	Complete transfer of special fuel to DOE’s Idaho National Engineering Laboratory for consolidated storage	3/31/2009
M-92-09	Establish milestones for plans to disposition sodium	7/30/2009
M-81-14	Complete FFTF sodium drain	9/30/2009
M-81-15	Submit FFTF surveillance and maintenance plan	6/30/2010
M-81-00A	Complete FFTF Facility Transition and initiate the surveillance and maintenance phase	2/28/2011
M-81-00A-T05	Complete auxiliary plant systems shutdown	2/28/2011

(d) National Historic Preservation Act:

FFTF Buildings 405 (Containment Building), 436 (Training Building), 4621 (Auxiliary Building West), 4703 (Control Building), and 4710 (Operations Support Building) have been identified as eligible for inclusion in the National Register of Historic Places under criterion “A” as

contributing properties recommended for mitigation within the Hanford Site Manhattan Project and Cold War Era Historic District (DOE RL-96-77, Appendix C, Table 1, Programmatic Agreement for the Maintenance, Deactivation, Alteration, and Demolition of the Built Environment on the Hanford Site, Washington). As such, assessments of the contents of these buildings (i.e. walkthroughs) are required under the **DOE/RL-97-56**, Table A.5, ***Hanford Site Manhattan Project and Cold War Era Historic District Treatment Plan***. In addition, evaluation of the Maintenance and Storage Facility (MASF) is needed prior to its decommissioning.

(e) Other Regulatory Considerations:

The contractor shall also address and comply with, but not necessarily be limited to, the following other federal and state regulatory considerations:

- The Hanford Site-wide Resource Conservation and Recovery Act (RCRA) Permit;
- The Hanford Site Clean Air Act (CAA) Air Operating Permit;
- 400 Area State Waste Discharge Permit No. ST 4501;
- The Toxic Substances Control Act (TSCA);
- Nuclear Safety Management [10 Code of Federal Regulations (CFR) 830];
- Radiological Protection (10 CFR 835)

In addition to the above, the contractor shall address and comply with all other applicable or relevant and appropriate requirements (ARARs) for the FFTF CERCLA processes, as appropriate. These ARARs are identified in an appropriate CERCLA or TPA document. These ARARs are standards that apply when any hazardous substance, pollutant, or contaminant remains in or on a facility. Other federal ARARs include the Resource Conservation and Recovery Act (RCRA), and the Clean Air Act (CAA). Examples of Washington State ARARs include Model Toxics Control Act (MTCA) and the State Environmental Policy Act (SEPA).

APPENDIX 6 – REPRESENTATIONS AND CERTIFICATIONS

FFTF Closure Project Contract Request for Proposal
Solicitation No. DE-RP06-04RL14600

Section K

Part IV - Representations and Instructions

Section K

Representations, Certifications and Other Statements of Offerors

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FFTF Closure Project Contract Request for Proposal
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Section K

**K.1 FAR 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING
PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR
1991)**

- (a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989--
 - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
 - (3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

K.2 FAR 52.204-3 TAXPAYER IDENTIFICATION (OCT 1998)

- (a) Definitions.

Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Offeror is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Offeror in reporting

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income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

- (b) All Offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the failure or refusal by the Offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.
- (c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the Offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the Offeror's TIN.
- (d) Taxpayer Identification Number (TIN).

☒ TIN 54-2141202

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of the Federal Government.

- (e) Type of organization.

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ Foreign government;

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☐ International organization per 26 CFR 1.6049-4;

☒ Other Limited Liability Company

(f) Common parent.

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

☒ Name and TIN of common parent:

Name SEC Federal Services Corporation

TIN 33-1082807

K.3 FAR 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DEC 2001)

(a) (1) The Offeror certifies, to the best of its knowledge and belief, that-

(i) The Offeror and/or any of its Principals-

(A) Are ☐ are not ☒ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☒, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are ☐ are not ☒ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) The Offeror has ☐ has not ☒, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory

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responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

- (b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

K.4 FAR 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (APR 2002)

- (a)
 - (1) The North American Industry Classification System (NAICS) code for this acquisition is 562910, Environmental Remediation Services.
 - (2) The small business size standard is 500 employees.
 - (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
- (b) Representations.
 - (1) The offeror represents as part of its offer that it [X] is, [] is not a small business concern.

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- (2) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, for general statistical purposes, that it ☐ is, ☒ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.
 - (3) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it ☐ is, ☒ is not a women-owned small business concern.
 - (4) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it ☐ is, ☒ is not a veteran-owned small business concern.
 - (5) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.] The offeror represents as part of its offer that it ☐ is, ☒ is not a service-disabled veteran-owned small business concern.
 - (6) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that-
 - (i) It ☐ is, ☒ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and
 - (ii) It ☐ is, ☒ is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:_____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.
- (c) *Definitions.* As used in this provision-
- "Service-disabled veteran-owned small business concern"-
- (1) Means a small business concern-
 - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

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- (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

"Veteran-owned small business concern" means a small business concern-

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern-

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

- (d) Notice.

- (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.
- (2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall-
 - (i) Be punished by imposition of fine, imprisonment, or both;
 - (ii) Be subject to administrative remedies, including suspension and debarment; and

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- (iii) Be ineligible for participation in programs conducted under the authority of the Act.

K.5 FAR 52.219-19 SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (OCT 2000)

- (a) Definition. "Emerging small business" as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the North American Industry Classification System (NAICS) code assigned to a contracting opportunity.

- (b) [Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.]

The Offeror [] is, [X] is not an emerging small business.

- (c) [Complete only if the Offeror is a small business or an emerging small business, indicating its size range.] Offeror's number of employees for the past 12 months [check this column if size standard stated in solicitation is expressed in terms of number of employees] or Offeror's average annual gross revenue for the last 3 fiscal years [check this column if size standard stated in solicitation is expressed in terms of annual receipts]. [Check one of the following.]

No. of Employees		Avg. Annual Gross Revenues	
<u> X </u>	50 or fewer	<u> </u>	\$1 million or less
<u> </u>	51 - 100	<u> </u>	\$1,000,001 - \$2 million
<u> </u>	101 - 250	<u> </u>	\$2,000,001 - \$3.5 million
<u> </u>	251 - 500	<u> </u>	\$3,500,001 - \$5 million
<u> </u>	501 - 750	<u> </u>	\$5,000,001 - \$10 million
<u> </u>	751 - 1,000	<u> </u>	\$10,000,001 - \$17 million
<u> </u>	Over 1,000	<u> </u>	Over \$17 million

K.6 FAR 52.219-21 SMALL BUSINESS SIZE REPRESENTATION FOR TARGETED INDUSTRY CATEGORIES UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (MAY 1999)

[Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.]

Offeror's number of employees for the past 12 months [check this column if size standard stated in solicitation is expressed in terms of number of employees] or Offeror's average annual gross revenue for the last 3 fiscal years [check this column if size standard stated in solicitation is expressed in terms of annual receipts]. [Check one of the following.]

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No. of Employees		Avg. Annual Gross Revenues	
<u> X </u>	50 or fewer	<u> </u>	\$1 million or less
<u> </u>	51 - 100	<u> </u>	\$1,000,001 - \$2 million
<u> </u>	101 - 250	<u> </u>	\$2,000,001 - \$3.5 million
<u> </u>	251 - 500	<u> </u>	\$3,500,001 - \$5 million
<u> </u>	501 - 750	<u> </u>	\$5,000,001 - \$10 million
<u> </u>	751 - 1,000	<u> </u>	\$10,000,001 - \$17 million
<u> </u>	Over 1,000	<u> </u>	Over \$17 million

K.7 FAR 52.219-22 SMALL DISADVANTAGED BUSINESS STATUS (OCT 1999)

- (a) General. This provision is used to assess an Offeror's small disadvantaged business status for the purpose of obtaining a benefit on this solicitation. Status as a small business and status as a small disadvantaged business for general statistical purposes is covered by the provision at FAR 52.219-1, *Small Business Program Representation*.
- (b) Representations.
- (1) General. The Offeror represents, as part of its Offer, that it is a small business under the size standard applicable to this acquisition; and either—
- [] (i) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and
- (A) No material change in disadvantaged ownership and control has occurred since its certification;
- (B) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (C) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net); or

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[] (ii) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(2) [] For Joint Ventures. The Offeror represents, as part of its Offer, that it is a joint venture that complies with the requirements at 13 CFR 124.1002(f) and that the representation in paragraph (b)(1) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. *[The Offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture:_____.]*

(c) Penalties and Remedies. Anyone who misrepresents any aspects of the disadvantaged status of a concern for the purposes of securing a contract or subcontract shall—

- (1) Be punished by imposition of a fine, imprisonment, or both;
- (2) Be subject to administrative remedies, including suspension and debarment; and
- (3) Be ineligible for participation in programs conducted under the authority of the *Small Business Act*.

K.8 FAR 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The Offeror represents that--

- (a) It [] has, [X] has not participated in a previous contract or subcontract subject to the Equal Opportunity Clause of this solicitation.
- (b) It [] has, [X] has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

K.9 FAR 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

The Offeror represents that—

- (a) It [] has developed and has on file, [X] has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or;
- (b) It [X] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

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K.10 FAR 52.223-4 RECOVERED MATERIAL CERTIFICATION (OCT 1997)

As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, by signing this offer, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

K.11 FAR 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

(a) Submission of this certification is a prerequisite for making or entering into this Contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this Offer, the Offeror certifies that-

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in Section 313 of the *Emergency Planning and Community Right-to-Know Act of 1986* (EPCRA) (42 U.S.C. 11023) and Section 6607 of the *Pollution Prevention Act of 1990* (PPA) (42 U.S.C. 13106), the Offeror will file and continue to file for such facilities for the life of the Contract the *Toxic Chemical Release Inventory Form (Form R)* as described in Sections 313(a) and (g) of EPCRA and Section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: (*Check each block that is applicable.*)

[] (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under Section 313(c) of EPCRA, 42 U.S.C. 11023(c);

[] (ii) The facility does not have 10 or more full-time employees as specified in Section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

[] (iii) The facility does not meet the reporting thresholds of toxic chemicals established under Section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

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- [X] (iv) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39; or their corresponding North American Industry Classification System (NAICS) Sections 31 through 33; or
- [] (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

K.12 FAR 52.225-2 BUY AMERICAN ACT CERTIFICATE (MAY 2002)

- (a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act-Supplies" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.
- (b) Foreign End Products:

Line Item No.	Country of Origin

[List as necessary]

- (c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

K.13 FAR 52.225-6 TRADE AGREEMENTS CERTIFICATE (MAY 2002)

- (a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."
- (b) The offeror shall list as other end products those supplies that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

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Other End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____
[List as necessary]	

- (c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for those products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

K.14 FAR 52.227-6 ROYALTY INFORMATION (APR 1984)

- (a) Cost or charges for royalties. When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:
- (1) Name and address of licensor.
 - (2) Date of license agreement.
 - (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.
 - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.
 - (5) Percentage or dollar rate of royalty per unit.
 - (6) Unit price of contract item.
 - (7) Number of units.
 - (8) Total dollar amount of royalties.

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- (b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer before execution of the contract, the Offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

K.15 DEAR 952.204-73 FACILITY CLEARANCE (MAY 2002)

NOTICES

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328

- (1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the offeror must submit a Certificate Pertaining to Foreign Interests, Standard Form 328, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package.
- (2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.
- (3) Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the

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Department of Justice must also be furnished concurrently to the cognizant security office.

(b) Definitions

(1) Foreign Interest means any of the following:

- (i) A foreign government, foreign government agency, or representative of a foreign government;
- (ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and
- (iii) Any person who is not a citizen or national of the United States.

(2) *Foreign Ownership, Control, or Influence (FOCI)* means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon:

- (1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;
- (2) A contract or proposed contract containing the appropriate security clauses;
- (3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;
- (4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;
- (5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;

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- (6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and
- (7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.
- (d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.
- (e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.
- (f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime contractor or the Contracting Officer for the prime contract.

**NOTICE TO OFFERORS - CONTENTS REVIEW
(PLEASE REVIEW BEFORE SUBMITTING)**

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

- (1) The Standard Form 328 has been signed and dated by an authorized official of the company;
- (2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;

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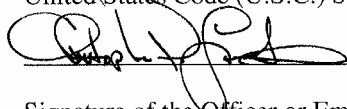
Section K

- (3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;
- (4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and
- (5) A summary FOCI data sheet.

NOTE: A FOCI submission must be attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

K.16 SIGNATURE/CERTIFICATION

By signing below, the Offeror certifies, under penalty of law, that the representations and certifications are accurate, current, and complete. The Offeror further certifies that it will notify the Contracting Officer of any changes to these representations and certifications. The representations and certification made by the Offeror, as contained herein, concern matters within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent representation or certification may render the maker subject to prosecution under 18 United States Code (U.S.C.) Section 1001.



February 9, 2004

Signature of the Officer or Employee

Date of Execution

Responsible for the Offer

Christopher P. Leichtweis, President

Typed Name and Title of the Officer or Employee Responsible for the Offer

SEC Closure Alliance LLC

Name of Organization

309 Bradley Avenue

Address

Richland, WA 99352

City, State, ZIP